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# CHARLES FRANCIS ADAMS

AN AMERICAN STATESMAN

BY

BROOKS ADAMS

I

THE SEIZURE OF THE LAIRD RAMS

BOSTON

1912



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# THE SEIZURE OF THE LAIRD RAMS

## *Part I*

I CONCEIVE that revolutions, and those who participate in them, can never be correctly valued separately from the whole movement of the civilization of which they form a part. Thus, as I see it, the American Civil War closed the era of British supremacy, won during the Napoleonic epoch, when privilege made its last stand, and opened the age of pure democracy, in which we now live, and whose bourne we cannot discern.

With the peace of 1815 a period began with England performing the function of the heart of human civilization and, like every other mechanism, this mechanism depended on an equilibrium among its parts which presupposed a certain distribution of wealth and power, generating a corresponding cast of thought. Such an equilibrium was incompatible with a united, rich, populous and democratic America. By 1861 it had already been impaired, on Lee's surrender at Appomattox it definitely shifted; but Lee's surrender would not have occurred unless Great Britain had been so neutralized during four years that her privileged class had not been able to ally their country with the South. It follows, therefore, that although the actual battles which accompanied this revolution were fought in the western hemisphere, the forces which determined victory converged in London, and were world wide.

Fate made my father the instrument to adjust the more potent of these forces as they impinged upon the aristocratic Government of Great Britain. He acted, in substance, for many months as the leader of English democracy, and the skill with which he performed a task, supposed to be incompatible with the diplomatic position, must be the test of his statesmanship. I am rather concerned with his fame as a man. I cannot hope to convey any adequate conception of the effect my father produced on me, for I look back upon him not only as the strongest man I ever knew, but as hav-

ing, I suspect, more fully developed than any American of the nineteenth century, that intellectual poise and unity of the eighteenth, which reached perfection in General Washington. I shall be content if I can suggest to a younger generation a standard by which even vaguely to appreciate the delicacy, the compass and the power of his mind.

As my father was born in 1807 and I in 1848, I have some consecutive remembrance of him only as he neared fifty, and just before he began his public life. At this point of my childhood I recall him best in his study in Boston, where I listened to his talk with Charles Sumner and John G. Palfrey about slavery; or, what I liked much better, teased him into reading Æsop's Fables to me out of a charming copy bound in blue, filled with engravings, in which I delighted. In Quincy he seemed to me to correct proof sheets endlessly. They were the proofs of the *Works of John Adams* which he was editing, and while he corrected I would sit at his table and pretend to study my lessons. I was a trying child, for I was restless and inattentive, and I have often wondered how a man as quick-tempered as my father could have been so patient with me. One night, in particular, I can see myself sitting at his table, where I was supposed to be busy with my book, but where instead I was wondering whether there was really red ink in a large glass inkstand in front of me. Stretching across a heap of proof sheets, I possessed myself of the inkstand, and then, putting my fingers across the mouth, I deliberately turned it upside down, and immediately a deluge of red ink ran through my fingers, flowed down the proof sheets, and began to trickle into the chair. Though my father, at a scream from my sister, who was sitting near me, seized the inkstand, I do not think he boxed my ears, or even scolded me much. He was rather grieved, apparently, to perceive how utterly he failed in training me to fix my attention on what I was doing. I really think one of the trials of his life was my inattention. He was always toiling with me and always failing, until he grew too busy to attend to me, when he handed me over to others who, I regret to say, succeeded no better than he. But in spite of my inattention he must have been fond of me, for he liked to have me with him, and he took me for long walks and told me stories of his boyhood; how he had travelled in a carriage alone with



his mother across Europe from St. Petersburg to Paris, in the winter of 1815, to join his father, who had been at Ghent; how he had seen Napoleon at a window in the Tuileries during the "hundred days"; and how after he came home he used to pass his winter vacations with his grandfather in his house at Quincy, when his chief occupation was to read French to John Adams and listen to his tales of the Revolution. Those winter vacations he always remembered for the cold, since being the youngest he sat at dinner farthest from the fire, and envied his grandfather, who had his back to it. In short, my father adored his children, was very domestic, never left home without his wife if he could help it, and disliked clubs. On that subject he was often eloquent to me, and there is a characteristic entry in his diary touching two of the most exclusive and desirable clubs in London. One day in 1862, after he had been more than a year in London as minister, he happened to attend some function at the Athenæum to which he had been specially invited, and on returning he made this note: "Although I was admitted a member on my first arrival here, as well as to the Travellers, I am so little of a club man that I have never set my foot in either before."

Ten years later we travelled alone together for some months in Europe, when I admit that I found my position difficult; but as soon as my mother joined us he became contented and sunny. He could not get along without his wife, and he never tired of impressing on me the importance of a man's marriage, because, said he, "I should never have amounted to anything without your mother. But for her I should have been a recluse."

In 1858 the Quincy district sent my father to Congress, and when I was eleven he took me with him to Washington. I do not know that what I saw there astonished me as a child, for it seemed to me as part of the order of the universe that others should defer to him, just as we all did at home; but as I look back the position he won in a single session seems marvellous. He almost immediately gained commanding influence, apparently without an effort, simply by force of character. Mr. Seward, especially, who was the prospective Republican candidate for the presidency, soon fell into confidential terms. Well do I remember Mr. Seward dropping in one wet winter afternoon for a chat. He sat down in an arm-chair, thoughtfully pulled

off his boots as he talked, and stretched out his feet, clad in blue knit stockings, to dry before the fire. My father and Mr. Seward had a somewhat similar cast of mind; they were cool tacticians, and they agreed in 1860-61 that the most important point to gain was time, so that the border States should not secede before Lincoln was inaugurated, and thus endanger Washington.<sup>1</sup> In support of this policy my father made a conciliatory speech, which Sumner never forgave,<sup>2</sup> and I have sometimes fancied that this breach between Sumner and my father had much to do with Sumner's course touching the arbitration of the Alabama Claims, which ended in permitting my father to win what I am now inclined to think was the most unqualified success of his life.

Meanwhile Mr. Lincoln had been elected President and had asked Seward to be his Secretary of State. Seward wished to have my father in the Treasury, but Mr. Lincoln had other views, and finally it was arranged between Seward and his chief that my father should be sent to England, in spite of Sumner's opinion that he was not fit for the post. And, indeed, there was something to be said for Sumner's doubts, for the mission was not only the most important on which any single American had probably ever been sent, but my father had never been in diplomacy, had never even had a thorough legal training, had never written a despatch, and had no experience in national public life beyond a single term in the House of Representatives. What I wonder at now is Seward's knowledge of character, and my father's self-reliance; for though he appreciated very imperfectly the full gravity of the situation in England, he yet knew enough to oppress any but a very rash or a very strong man, and my father was not rash. Many years afterward he said of himself, that his mission to England seemed to him "like a wild dream from which I awake with a feeling of safety."

For just a century before the Rebellion broke out, America had been rising toward both political and economic independence of Europe, and after 1850 it began to dawn on the European mind that if the democratic experiment in the West were to achieve its apparent destiny, privilege in Europe must end.

<sup>1</sup> *Proceedings*, XLIII. 660.

<sup>2</sup> *Pierce, Memoir and Letters of Charles Sumner*, IV. 9-13.



John Bright was constantly harping on this theme, and again and again passages like this occur in his speeches during our Civil War: "When I speak to gentlemen in private upon this matter, and hear their own candid opinion — I mean those who differ from me on this question — they generally end by saying that the Republic is too great and too powerful, and that it is better for us — not by 'us' meaning you [the laboring class], but the governing classes and the governing policy of England — that it should be broken up." Therefore, in 1861, the British landed gentry hesitated only in openly siding with the South, and dividing the Union, because they were not certain that the democratic movement at home might not have gone too far to make such a course safe. As a boy at school in England I saw these feelings in all their crudity. I always heard the North vilified or ridiculed, and John Bright denounced as an anarchist and a foe of order. For John Bright was the foe of privilege, which to my schoolmates meant order, and the representative in Parliament of the great levelling propaganda which terrified the aristocracy. The schism which split English society was almost as deep and fierce as that which rent American, and in March, 1863, just as the great struggle began over stopping the iron-clad rams building by the Lairds, John Bright and John Laird between them defined the issue with something akin to ferocity. On March 26 Bright addressed a frantically excited audience of trade-unionists in St. James's Hall, in London, and the next night Laird answered him amidst a cheering House of Commons. This was the Laird who had already built the *Alabama*; who had, on the day that Lord Russell issued the order to seize her, sailed down the Mersey on her with his daughter as on a party of pleasure in order to abet her escape; and who at that moment sat for Birkenhead and was notoriously building for the Confederacy the two most powerful battle-ships in the world.

On March 26 Bright opened the vast meeting of working-men with these words:

Privilege thinks it has a great interest in the American contest, and every morning, with blatant voice, it comes into your streets and curses the American republic. Privilege has beheld an afflicting spectacle for many years past. It has beheld thirty millions of men, happy and prosperous, without emperor, — without king, —

without the surroundings of a court, without nobles, . . . without State bishops and State priests, "sole vendors of the lore which works salvation" — without great armies and great navies, — without great debt and without great taxes, — Privilege has shuddered at what might happen to old Europe if this grand experiment should succeed. . . . There may be men outside, there are men sitting amongst your legislators, who will build and equip corsair ships to prey upon the commerce of a friendly power, — who will disregard the laws and the honour of their country, . . . and who, for the sake of the glittering profit which sometimes waits on crime, are content to cover themselves with everlasting infamy. . . .

I speak not to these men . . . I speak to you, the working-men of London, the representatives, as you are here tonight, of the feelings and the interests of the millions who cannot hear my voice. I wish you to be true to yourselves. Dynasties may fall, aristocracies may perish, privilege will vanish into the dim past; but you, your children, and your children's children, will remain, and from you the English people will be continued to succeeding generations.

✓ You wish the freedom of your country. You wish it for yourselves. You strive for it in many ways. Do not then give the hand of fellowship to the worst foes of freedom that the world has ever seen. . . . You will not do this. (Cries of Never!) I have faith in you.

To this, on March 27, Laird replied:

I will allude to a remark which was made elsewhere last night — a remark, I presume, applying to me, or to somebody else, which was utterly uncalled for. (Hear!) I have only to say that I would rather be handed down to posterity as the builder of a dozen *Alabamas* than as the man who applies himself deliberately to set class against class (loud cheers), and to cry up the institutions of another country, which, when they come to be tested, are of no value whatever, and which reduced liberty to an utter absurdity. (Cheers.)

Whatever I may have felt as a boy at school touching the hatred of the English upper class, I can now look back upon what occurred during the Civil War with complacency, for not only did we win, not only did I afterward see Chief Justice Cockburn actually flee from the council room at Geneva when the award of the Arbitration was declared, but the malevolence of the aristocracy gave my father his opportunity.

Well do I remember the May evening in 1861 when the family arrived in London, and how almost at once the venomous atmosphere of the place began to oppress even a boy like me;



but my father, as far as I could see, remained composed, though the first news he read in his morning paper was the acknowledgment of Confederate belligerency. Then he must have realized what was in store for him. He must have known the complexion of the British Cabinet; that it was intensely aristocratic, and supposed to be one of the ablest that had sat during the century. Lord Palmerston, the Prime Minister, belonged to the influential Temple family, and had held office almost continually since 1807, the year of the attack of the *Leopard* on the *Chesapeake* in Hampton Roads. He had been nurtured in the traditions of the press gang, and had matured in the era of the arrogance of Waterloo.

Next to Lord Palmerston ranked Lord John Russell, the Secretary of State for Foreign Affairs, and the minister with whom my father had personally to deal. Lord John was the third son of the sixth Duke of Bedford, one of the most opulent and powerful nobles of England or of the world. Lord John was born in 1792, and in 1813, when he was not yet twenty-one, and only a few months after the *Constitution* captured the *Guerrière*, the Duke ordered Lord John's return to the House of Commons from the family borough of Tavistock, very much as he might have ordered for him a suit of clothes. It is true that Lord John afterward made his political fortune by supporting the Reform Bill, which made havoc with such convenient seats as Tavistock, but none the less he had the prejudices of his class as fully as Lord Palmerston, or as King William himself, who so cordially disliked him. Even his father remonstrated with him about his supercilious manners and the way in which he offended his followers in the House by treating them *de haut en bas*.

Mr. Gladstone was Chancellor of the Exchequer, and decidedly the most restless, as he was possibly the most interesting, member of the Government. Starting, in the first reformed Parliament, as an extreme Tory, Gladstone pretty early began to suspect that he could obtain what he wanted in life by a shorter path than conservatism, and in 1861 he was already nearing the parting of the ways. Perhaps the most flexible of all eminent English politicians of the nineteenth century except Disraeli, Gladstone was neither liked nor trusted by the class to which he by birth belonged, least of all by his chief,



Lord Palmerston. Indeed Lord Palmerston was far the more straightforward and the more reliable man of the two. Of all the public men who held office during the Civil War, Gladstone, though with radical proclivities, was the most inveterate and dangerous foe of the North. When the North prevailed, Gladstone, with amazing assurance, turned right about. He had an awkward record to explain, but inconsistency never troubled Mr. Gladstone. He calmly dismissed the subject by saying that when he spoke at Newcastle in 1862, advocating in substance an alliance between England and the South, he must have been demented. He was not demented at Newcastle, he was only then what he remained until death, — the most slippery of men.

Perhaps Gladstone was best described by William E. Forster. Forster was too frank to harmonize with Gladstone, and the time came when Gladstone dropped him from his Cabinet. Afterward when Gordon was besieged in Khartoum, Forster tried to make Gladstone relieve him, but Gladstone, finding it inconvenient to do so, pretended to believe that there was no danger. By this time every one who knew Gladstone recognized that he could convince himself of anything that served his purpose, and one night Mr. Forster, in the heat of debate, blurted out the truth. What he said made a great commotion, but it was never forgotten. "I believe every one but the Prime Minister is already convinced of that danger, . . . and I attribute his not being convinced to his wonderful power of persuasion. He can persuade most people of most things, and, above all, he can persuade himself of almost anything."

In May, 1861, Lord Campbell held the Great Seal, but he died in June. The Attorney-General, Sir Richard Bethell, succeeded him, under the title of Lord Westbury, and few people pretended either to like or trust Sir Richard. Four years afterward he achieved a distinction which no other chancellor had achieved since Lord Macclesfield in 1725. Parliament removed him from office for practices so questionable that they could not be ignored.

The rest of the Cabinet were less conspicuous, but they were, as a rule, men of good ability, and they reflected pretty fairly English Liberal opinion until it shaded into the radicalism of John Bright. With one or two exceptions, all of them, prob-

ably, would have liked to dismember the United States. They differed chiefly as to the risk they were willing to run. Consequently men like Palmerston, Gladstone, Russell and Bethell were much occupied in devising means to succor the South safely; only Palmerston and Russell preferred to work above-board, if they could, while Bethell was a natural secret conspirator. All of them were politicians of long experience, of proved ability, and, except Bethell, not much more unscrupulous than successful political managers are apt to be.

Diplomats hated Palmerston, for he was the incarnation of arrogance. Nothing, for example, could exceed the brutality with which he had trampled on the helpless Greeks in the Don Pacifico affair. Still, this did not hurt him with Englishmen who understood him and liked him, and also liked his arrogance. He had a sure instinct for the drift of English opinion, especially among his own class. Lord John was not so popular, and was rather more than suspected of slackness in truth-telling, while Gladstone was notoriously shifty. Bethell's reputation was not good. All the ministers were, of course, at home, surrounded by lawyers and secretaries, and enjoying every facility for obtaining advice and information. The British Foreign Office, in particular, boasted of its admirable staff and of its perfect equipment.

Mr. Adams confronted this whole phalanx alone, in a strange and hostile land, and at the head of a legation preposterously ill-prepared for an emergency. His one advantage was that, being himself in his prime, he represented a people who were still elastic and nerved to the point of exaltation by the imminence of their danger. The English aristocracy were, on the other hand, moribund, and were largely led by men in the decline of life. In 1861 Lord Palmerston was seventy-seven years old, plainly failing in vigor, so much so that he avoided when he could severe parliamentary strains. Thus, though the British aristocracy were outwardly as haughty and supercilious as ever, they were at heart growing timorous, and were approaching a period when they would recoil before a resolute adversary even when the odds strongly favored them. Lord Morley had cause afterward to notice this phenomenon, and has commented upon it, in his *Life of Gladstone*, when speaking of the Reform Bill of 1867: "The same timidity that



made the ruling classes dread reform, had the compensation that very little in the way of popular demonstration was quite enough to frighten them into accepting it;"<sup>1</sup> and what was true of England in 1867 was beginning to be true of England under Palmerston.

With such antagonists the position of an American minister was extremely difficult. A moment's irresolution or apparent timidity would have brought him into contempt, and irritability or bravado would have made him ridiculous; while truckling would have ruined him both abroad and at home. To succeed he needed to have at once good manners, absolute firmness, and perfect knowledge of the law and the history touching the controversies he had to handle, for he had no one to help him. Beside all this he must have a profound and intuitive insight into English character. He stood between an exasperated people in America and an insolent, contemptuous, unscrupulous and vindictive aristocracy in England.

As the summer of 1861 wore on amidst Federal disasters, the rancor which had begun to seethe in England against the North with the attack on Sumter, changed into a feeling akin to contempt; so that when in November Captain Wilkes took Mason and Slidell from the British ship *Trent* in the West Indies, an explosion of mixed anger and disdain followed in England which in the twentieth century seems incredible. By the American jurist or statesman the act of Wilkes can only be considered to have been exceeded in its impropriety by its stupidity, for Mason and Slidell, as prisoners, were of no value to the Government at Washington; while, ever since the time of General Washington, Americans had been protesting against, and sometimes fighting to avenge, just such outrages on neutrals as he committed. And yet Lord John Russell, the liberal, without giving President Lincoln time to disavow the act of his officer, wrote a despatch so insulting in tone that it revolted the Prince Consort, who insisted on redrafting it. Even as it stood when sent, this note demanded peremptorily an apology and the surrender of the prisoners within seven days. There can be little doubt touching the intent of the men who acted thus. When the news of the *Trent* reached London, Lord Palmerston and Lord John Russell fully intended to provoke

<sup>1</sup> *Life of Gladstone*, II. 227.



war, and this was the construction put upon it by John Bright and by most friends of the North. To keep the excitement hot the newspapers, which were organs of the Government, were rampant in invective, troops were hurried to Canada, the fleet on the American coast was ordered to prepare for action, and Mr. Adams' notification to the Cabinet, that Wilkes had acted without instructions, was suppressed.

However rashly an American captain may have behaved, or however foolishly the American people may have been expected by an Englishman to act when under strong excitement, it was poor policy for a British Minister of Foreign Affairs, who wished to pick a quarrel with the United States, to throw away every conventional rag of decency as did Lord Russell, when the news of the *Trent* reached London; for by so doing he finally raised a formidable resistance at home, and he also brought out some of the strongest qualities of his antagonist, the American Minister.

Law is only a formula of words which makes intelligible to mankind a movement of energy, and as the energy varies in power or direction, so does the law vary. The difficulty with which statesmen and judges always contend is that they have to guess, at any given moment, whether the law on which they rely is still vital, or whether it is dead and will give way beneath them.

When Lord Palmerston and Lord Russell were young, the only law which England knew upon the ocean was her own will. If she wanted to do a thing, she did it, and her judges would declare the act, whatever it might be, to be lawful. If in 1793 England wished to starve France, by severing her from her colonies, the Government ordered the navy to capture all neutral ships loaded with French colonial produce bound to France and bring them home, where the judges condemned them under the "Rule of the War of 1756," as they called it. It was a phrase meaning that England chose to fight that way. If the British fleet happened to be short of seamen, the officers used the press on American ships as freely as they used it in their own ports. If an American captain resisted, they fired into him, as the *Leopard* fired into the *Chesapeake* during the very year in which Lord Palmerston first became a minister of the Crown. No American lawyer who had ever thumbed a Blackstone but knew

that such outrages as that of Wilkes could be justified by plenty of British precedents, and that the worst of these precedents had been approved by American lawyers as eminent as Chief Justice Parsons of Massachusetts. The English lawyers knew these precedents quite as well as the American, and were inclined when Lord Palmerston first consulted them to hesitate. That was not the way, however, in which ministers of the Waterloo generation liked to deal with lawyers. Lord Palmerston ordered a satisfactory opinion, much as he might have ordered a pair of boots, and he got it in one of the most shameless opinions that even English Crown Counsel had ever given on maritime law. It would have been well enough, they said, if Wilkes, when he took the *Trent*, had sent her into port for condemnation, but he committed a crime against England when he removed the men and let the ship go.

Such considerations as these left Mr. Adams quite unmoved. He expected as much. Had not his grandfather tried the case of Michael Corbet for killing Lieutenant Pantton while resisting a press gang on board the brig *Pitt Packet*, in old colonial days? <sup>1</sup> Had not his father, when on his way to St. Petersburg, in 1809, seen an English officer board the ship which carried him and his family, muster the hands on deck, and threaten to carry away a young sailor whom he knew to be an American? Could he not remember the negotiation of the treaty of Ghent, when England declined to give up any of her pretensions? To him the act of Wilkes, although quite indefensible, seemed to be not altogether unfortunate if it were but used wisely by the United States to force from England concessions on these vital points where she had always been unyielding. So when he heard the news suddenly, one day when visiting in the country, he remained perfectly composed, and waited for the result. His attitude had the greatest effect in steadying the friends of the North in England, and enabling them to concentrate an opposition to extreme measures which in the end prevailed.

One day when he and my mother were visiting Monckton Milnes at Fryston in Yorkshire, as they, with the other guests, were starting on some country expedition, he received a telegram with the news. Milnes was one of the few aristocrats who sympathized with the North, and he had invited William

<sup>1</sup> See *Proceedings*, XLIV. 422.



E. Forster, who, with Bright and Cobden, supported the United States in Parliament, to meet the Minister. On that occasion Milnes and Forster saw how my father bore a severe shock, and thenceforward their confidence never faltered. Had he wavered their position would have been untenable; how far afterward they and their friends were prepared to venture is best proved by their actions. In the midst of the turmoil, on December 5, when the *Times* and the *Post*, the organs of the Government, were lashing the public to frenzy, a great dinner was given to Bright at Rochdale, and there not only was a letter read from Cobden recalling the precedents of the Napoleonic wars and insisting on forbearance, but Bright made one of his boldest speeches challenging the sincerity of the ministry and protesting against permitting "your newspapers or your public speakers . . . [to] bring you into that frame of mind under which your government, if it desires war, may be driven to engage in it." This was the policy which Lord Palmerston and Lord Russell were pursuing, but it was one in which they could not afford to be exposed.

Mr. Adams constantly referred in his diary to remarks made by Bright and others touching Lord Palmerston's loss of vigor, and I am inclined to think that, after the first explosion of passion had spent itself, Palmerston concluded that it would be better for him not to push the *Trent* episode to an extremity, since he might accomplish the result he desired more easily. At this point in the American conflict Englishmen had not learned to judge accurately the relative strength of the combatants. They underestimated the North. They supposed that the only serious menace to the South lay in the blockade, and they imagined that the blockade might be as easily raised by a Southern fleet built in England and paid for by the South in cash, as by an English fleet which they would have to support themselves. There were in England abundance of men, like the Lairds, eager for this job, and English ministers did not as yet realize the difficulties into which they must fall while countenancing such frauds on the neutrality laws. When Wilkes boarded the *Trent* in November, 1861, the construction of a Southern navy was advancing fast in English dockyards, and although Mr. Adams did not collect evidence against the *Florida* specific enough to present until February, 1862, she



was then ready for sea. She lay, it is true, a month longer in port, waiting for her officers; but as all the Liverpool officials were avowedly Southern sympathizers she ran no risk, and sailed without hindrance. Lord Russell treated Mr. Adams' complaints with something not very unlike contempt.<sup>1</sup>

As a scheme of war in disguise, the plan was good, but it soon proved to be impossible to execute without scandal, because, as Mr. Adams pointed out, the duty of nations in amity was "not to suffer their good faith to be violated . . . merely from the insufficiency of their prohibitory policy." To build a Confederate navy in Great Britain presented to the Government an alternative; they might either neglect to put their neutrality laws in force, or they might have them construed away by the courts; but in either case they must perpetrate on the United States a fraud too flagrant to be safe with such an American minister in London as they began to suspect Mr. Adams to be. Hence I infer that Lord Palmerston decided to get rid of him. Not that Palmerston necessarily reached this conclusion consciously, for Palmerston, I apprehend, very often acted by instinct like an animal; but none the less I have no doubt that he purposed driving the American Minister out of England, and that in the spring of 1862 he was only looking for a pretext to pick a quarrel. Those who were best informed and who, on the spot, watched events most closely, thought so too. On January 25, 1865, Mr. Adams made this entry in his Diary: "Mr. Forster recalled the fact that two or three times during my stay, there had been efforts made to fix a quarrel upon me, which he intimated had been avoided mainly by my care. I applied his remark by recalling the incident of Lord Palmerston, as a most amusing one. On the whole Mr. Forster has been our firmest and most judicious friend. We owe to his tact and talent even more than we do to the more showy interference of Messrs. Cobden and Bright."

On the 11th of June, 1862, he came home late in the afternoon and found on his table the following letter from Lord Palmerston, marked "Confidential," which is probably the most extraordinary document ever written even by him. It was on the subject of General Butler's proclamation touching the women of New Orleans.

<sup>1</sup> *Earl Russell to Mr. Adams, March 27, 1862.*

*Confidential.*

BROCKET, 11 June, 1862.

MY DEAR SIR, — I cannot refrain from taking the liberty of saying to you that it is difficult if not impossible to express adequately the disgust which must be excited in the mind of every honorable man by the general order of General Butler given in the inclosed extract from yesterday's *Times*. Even when a town is taken by assault it is the practice of the Commander of the conquering army to protect to his utmost the inhabitants and especially the female part of them, and I will venture to say that no example can be found in the history of civilized nations till the publication of this order, of a general guilty in cold blood of so infamous an act as deliberately to hand over the female inhabitants of a conquered city to the unbridled license of an unrestrained soldiery.

If the Federal Government chuses to be served by men capable of such revolting outrages, they must submit to abide by the deserved opinion which mankind will form of their conduct. My dear Sir, Yours faithfully,

PALMERSTON.

C. F. Adams Esqr.

(Address: Private. His Excelcy Chas. F. Adams Esqr.  
Palmerston.)

The longer Mr. Adams considered this letter, the more he suspected that it covered some unfriendly purpose, such as a joint intervention with France, of which rumors were abroad; but at all events Palmerston meant mischief, and the only way to escape him was to silence him. The next day he explained to Mr. Seward what he proposed to do. "It strikes me that he has by his precipitation already put himself in the wrong, and I hope to be able to keep him there;" but, he added, "the responsibility, thus unexpectedly thrown upon me, is felt to be of the most serious character." In after years he was rather fond of talking with me of this episode, and I received the impression that secretly he felt more satisfaction at his success than at almost any incident of his public life, for he had no liking for Palmerston. But whether this be so or not, he extricated himself from his predicament with wonderful adroitness. On June 13 he answered, telling Lord Palmerston plainly that he doubted whether he ought to receive such a letter, but before deciding he must know whether Lord Palmerston wrote as Prime Minister, or as a private gentleman expressing an individual opinion. Then he went to



Earl Russell and asked him what his colleague meant. Russell did not know. Meanwhile Lord Palmerston appears to have been at a loss. He waited until the 15th, and then wrote a few platitudes, without answering the question. Mr. Adams rejoined that he was "quite certain" that his government did not send him to London "to entertain any discussions of this kind," and that he could not submit "under the seal of privacy" to "any indignity which it might be the disposition of the servants of any" foreign "sovereign, however exalted," to offer. Therefore he wished to ask again whether Lord Palmerston's first note was official, or simply "a private communication of sentiment between gentlemen." Thus driven to bay, Palmerston, on the 19th, admitted, in a long letter of justification, that he had spoken as Prime Minister. Then my father closed the correspondence in these words: "The difficulties in the way of this anomalous form of proceeding seem to me to be so grave . . . as to make it my painful duty to say to your Lordship that I must hereafter, so long as I remain here in a public capacity, decline to entertain any similar correspondence." <sup>1</sup>

If in Europe there was one public man more hated and feared by diplomats than another, it was Viscount Palmerston. When old Baron Brunnow, the Russian Ambassador in London, talked about Palmerston, he grew warm. It chanced that on the day after Palmerston's assault on Mr. Adams, which was, of course, still a secret, Brunnow met Mr. Adams in the ante-chamber of the Foreign Office and told him of his own troubles before the Crimean War. How Palmerston never spoke the truth, which, perhaps, was admissible; but how he would set traps for the unwary, in order to increase his popularity in the House of Commons by immolating his victims. How life became one long martyrdom, and how retort was futile, because Palmerston had the "hide of a rhinoceros." Mr. Adams, at least, had warning of his danger.

For once in his life Lord Palmerston felt that his hide had been pierced. He had no longer the nerve to face John Bright in debate on such an issue, so he dropped the controversy, but characteristically he bore no malice. The next year my father met him in public and offered his hand. Lord Palmerston took

<sup>1</sup> The letters are printed in Adams, *Charles Francis Adams*, 248-260.



it, and shortly afterward Lady Palmerston asked my mother to come again to her receptions. The invitation was accepted. There was no scandal, and Mr. Adams remained in London to watch the building of the Confederate navy.

His last letter to Lord Palmerston was dated June 20, 1862; his first to Earl Russell touching the *Alabama* was written on June 23. It was the experience of the *Florida* over again. Mr. Dudley, the American consul at Liverpool, sent the Minister most explicit affidavits which he enclosed to the Foreign Office. The Foreign Office sent them to the Law Officers of the Crown, and on their advice transmitted them to the Commissioners of Customs at Liverpool, who, in turn, referred "the matter to our solicitor, [who] has reported his opinion that, at present, there is not sufficient ground to warrant the detention of the vessel, or any interference on the part of this department, in which report we beg to express our concurrence." As it was notorious that all these Liverpool officials were in substantial collusion with the Confederates, the situation seemed desperate; but, as a last resource, Mr. Adams took the opinion of Mr. Robert Collier,<sup>1</sup> a member of Parliament and one of the most eminent counsel at the bar. Mr. Collier having considered the evidence advised the Legation that the Collector of Customs at Liverpool would incur "a heavy responsibility" if he did not seize the vessel, and that if the Foreign-Enlistment Act were not enforced on that occasion it was but "a dead letter." He added that, if the ship escaped, the Federal Government might have "serious grounds of remonstrance." This advice of Mr. Collier did not move Mr. O'Dowd, the Assistant Solicitor of Customs at Liverpool; it, however, disturbed Lord Russell, who sent it marked "Urgent" to the Law Officers of the Crown. Then followed a delay of three days, which has never been well accounted for, but which was momentous, not only because it was afterward held to fix negligence upon Great Britain, but because what occurred in the interval showed, as Semmes boasted, that the Lairds at Liverpool were better informed of the secret thoughts and actions of the highest officials than were those officials informed of one another.<sup>2</sup> The biographer of

<sup>1</sup> Robert Porrett Collier, Lord Monkswell (1817-1886).

<sup>2</sup> On December 22, 1865, the following entry occurs in Mr. Adams' Diary: "Incidentally he [Mr. Moran, Secretary of Legation] told me that he had also

Lord John Russell has told how, "almost while Sir Roundell Palmer and Sir William Atherton were considering the papers," the *Alabama* left her dock,<sup>1</sup> so that the adverse decision must have been betrayed before it could have been drafted, and how the next morning, July 29, 1862, she steamed down the Mersey on a pretended trial trip, while the opinion was on its way to Downing Street. Still the situation was not irretrievable. The *Alabama* might be stopped in a colonial port, and the Duke of Argyll advised Lord Russell to seize her. Lord Russell felt disposed to follow this advice and submitted an order to the Cabinet. The Duke has told what followed: "When you brought it before the Cabinet there was a perfect insurrection. Everybody but you and I were against the proposed step. Bethell was vehement against its '*legality*,' and you gave it up."<sup>2</sup>

Mr. Adams always inclined to regard Lord John Russell as an honest man, and he may have been right; but as much could not be said of Bethell, who was Lord John's evil genius, and who finally contrived to put the ministry in a position in which it could only defend its integrity by admitting its imbecility. Apparently, until he pondered upon Collier's opinion, Earl Russell never appreciated what his position would be, should he have to defend himself against John Bright on the charge of having been privy to a conspiracy to build a Confederate navy in Great Britain in fraud of the neutrality laws. Gladstone, who was not directly responsible for the conduct of foreign affairs, might not shrink from such shame if he thought it profitable to himself; but Lord John had a certain instinct of honor which, at least in the long run, revolted against secret treachery. And in this Lord Russell did not stand alone. After experiment with a system of fraudulent neutrality not only Lord Russell, but Lord Palmerston and, to do him justice, Gladstone himself, together with most of the aristocracy, would have preferred an open war, if only an open war had not been, as they thought, so dangerous. In their minds all turned upon the power of the North, in combination with

been able to trace the source of the betrayal of the decision of the Government which prompted the sudden escape of the *Alabama*. He showed me what purported to be a copy of a short note signed by V. Buckley and addressed to Mr. [Caleb] Huse, the rebel agent, warning him that what he called 'his '*protégé*' was in danger. This Victor Buckley is a young clerk in the Foreign Office."

<sup>1</sup> Walpole, *Life of Lord John Russell*, II. 354.

<sup>2</sup> *Ib.* II. 355, note.



native radicals, to injure them, and they looked longingly for the moment when the North should sink low enough to be treated as a negligible enemy by men who had no stomach for a domestic broil. The exact order in which events followed each other during the next few months is therefore illuminating, for it throws into brilliant relief not only the differences in temperament among these three famous aristocratic statesmen, Lord Palmerston, Lord Russell and Mr. Gladstone, but it fixes the stage of decrepitude to which their class had fallen.

The *Alabama* sailed from Liverpool on July 29, 1862, just after McClellan's reverses in the Peninsula, and on September 14 London heard the news of the Second Battle of Bull Run. Taking these disasters together, it seemed, in Europe, as probable that the North had been overcome, and Lord Palmerston inclined to think that Washington must fall. On this supposition he wrote to Lord Russell that it might be judicious "to recommend an arrangement upon the basis of separation." Lord Russell waited a few days to see what would happen, and then replied that "whether the Federal army is destroyed or not," Great Britain should "recognise the Southern States as an independent State," and should arm Canada accordingly.

In September, 1862, the Northern fortunes fell to their lowest point, and, conversely, the aggressive temper of England culminated. Lord Palmerston's view fluctuated with the fluctuation of the war, like a barometer. Lord Russell showed less sensitiveness. Gladstone blundered. Gladstone so hungered to be Prime Minister forthwith that he tried to be conservative and radical at once. On September 17 McClellan won the victory of Antietam. Instantly, while Lord Palmerston cooled, Lord Russell took to equivocation, and Gladstone plunged forward, blatant. It mattered nothing to Gladstone what horse he rode provided he could win the stakes, but even Gladstone could not ride two horses, galloping in opposite directions, at the same time. The northern counties favored the radicals and the United States, and just at this time Gladstone, who was by way of posing as an advanced liberal and friend of the people and of economy, was invited to make a sort of triumphal progress through parts of Northumberland, Durham and Yorkshire. He was to begin with a great reception



at Newcastle on October 7, because, as his biographer has observed, "a sure instinct had revealed an accent in his eloquence that spoke of feeling for the common people."<sup>1</sup>

The "common people" had rejoiced so much over the news of Antietam, then about a week old, that Lord Palmerston had made up his mind to wait awhile before committing himself further.<sup>2</sup> Not so Mr. Gladstone, who thought he had his opportunity to score double. After reflecting profoundly on his way to Newcastle on what he should say "about Lancashire, and America," he decided that the tide for the South was at flood and that he would swim with it. In this mind he made a speech in the Newcastle town hall which must always rank as one of the most remarkable of his life. He said: "We know quite well that the people of the Northern States have not yet drunk of the cup, . . . which all the rest of the world see they nevertheless must drink of. We may have our own opinions about slavery; we may be for or against the South; but there is no doubt that Jefferson Davis and the other leaders of the South have made an army; they are making, it appears, a navy; and they have made what is more than either, they have made a nation."

Hardly two months had elapsed since Earl Russell had himself admitted, by ordering the arrest of the *Alabama*, that the navy of the South was an English navy, built against the most sacred obligations which one country can be under toward another. At Newcastle Mr. Gladstone glorified this breach of faith, and thus in substance announced himself in favor of an alliance with the South. Language by a minister, before a declaration of war, could hardly go further.

The speech made a prodigious sensation, but it was soon seen to be a mistake. Gladstone felt it to have been one with growing acuteness for many a long day. In a kind of public confession of his sins he afterward admitted that he had committed an "offence of incredible grossness." His excuse was twofold: first, that he must have been out of his senses at Newcastle, and, second, that Lord Palmerston "desired the severance [of the Union] as a diminution of a dangerous power." This, Gladstone protested, was a worse crime than his, only Lord

<sup>1</sup> Morley, *Life of Gladstone*, II. 77.

<sup>2</sup> Walpole, *Life of Lord John Russell*, II. 351.

Palmerston "prudently held his tongue."<sup>1</sup> Prudence was not Gladstone's strongest quality.

Lord Palmerston disliked Mr. Gladstone and disagreed with him on almost every subject, from his views on the suffrage, to his eternal preaching of economy and his sympathy with the downtrodden tax-payer. The Prime Minister was constantly lecturing his obstreperous Chancellor of the Exchequer on his errors, and he very willingly, therefore, took so excellent an opportunity to give him a lesson which he would remember. The next week he sent Sir George Cornwall Lewis to Hereford to correct Mr. Gladstone's notions of international law, and to make it clear that the Cabinet, as a whole, had no sympathy with them. Then Mr. Gladstone began to disclaim, and he continued explaining and disclaiming until he died.<sup>2</sup>

Meanwhile the proposition which Lord Palmerston had made to Lord Russell touching intervention remained to come before the Cabinet, and on October 2, in reply to a letter from Earl Russell, Lord Palmerston wrote that had the South continued its successes against the North, mediation might have been opportune, but that recently those successes had been checked. Therefore it would be wiser to wait. This was just before Gladstone's speech. On October 13 Lord Russell had not changed his mind, however much Lord Palmerston may have vacillated. On that day he circulated a confidential memorandum among the Cabinet rather urging the "duty" of "friendly and conciliatory" interposition. On October 23 the Cabinet met to consider this memorandum, but that day Lord Palmerston's opinion prevailed, and nothing was done.

Meanwhile Mr. Adams, thinking that he ought to take some notice of Mr. Gladstone's harangue, and being very anxious beside to know what it meant, asked Lord Russell to appoint an hour at which he might see him at the Foreign Office. Lord Russell named October 23, the very day of the meeting, and it is charitable to suppose that he fixed on a time after the meeting had adjourned in order that he might be able to speak definitely touching the future. Certainly the Secretary for Foreign Affairs distinctly told the American Minister that no change in England's policy of neutrality was contemplated,

<sup>1</sup> Morley, *Life of Gladstone*, II. 82.

<sup>2</sup> See C. F. Adams, *Studies: Military and Diplomatic*, 407.



either by Mr. Gladstone or by anybody else, for the immediate future, and Mr. Adams seems to have thought his manner conciliatory. Yet, when he gave this assurance, Lord Russell had decided not to drop his project of intervention. By some means a hint was conveyed to the French Emperor that an offer by him to co-operate in intervention with England might be opportune, and Napoleon made such an offer forthwith. This gratified Mr. Gladstone, but even with this help he doubted whether he could overcome the inertia of his colleagues. He had already recognized the failure of his Newcastle speech. The event justified his premonitions. The decisive test of strength fell on November 12. The day before Gladstone wrote home that both "Lords Palmerston and Russell are *right*," and yet he still doubted. On November 13 he recorded his defeat, and explained how Lord Russell had "turned tail" without "fighting out his battle," and how Lord Palmerston had given Lord Russell's proposal only "a feeble and half-hearted support."<sup>1</sup> Thus Lord Palmerston, who, more than any living man, incarnated the spirit of his class, appeared at this supreme moment, like Macbeth, letting "'I dare not' wait upon 'I would,'" while Lord John justified his reputation for duplicity, and Gladstone, for the first time, fathomed the impotence of his own order. From that day Gladstone had done with doubts and threw his lot with the radicals. And Gladstone was right; for an aristocracy which recoiled from stabbing democracy when democracy lay gasping, was moribund.

Nor did Gladstone stand alone in recognizing that the onset of the English aristocracy had collapsed with the repulse of Lee at Antietam. By a subtle instinct all Europe and America became conscious of a change of status. It was the United States now which pressed on England, not England on the United States. The dates fit with an astonishing precision. Hitherto Mr. Adams' work had been chiefly defensive, as in the affair of the *Trent*. He had indeed made energetic remonstrances in regard to the escape of both the *Florida* and the *Alabama*, but in neither case had he gone so far as to put a pressure, even verging on coercion, upon England to do her duty. He reached that point on the day when Great Britain

<sup>1</sup> Morley, *Life of Gladstone*, II. 85.



admitted to herself that she dared not strike the North after a victory.

On November 12, according to Gladstone, Lord Russell "turned tail," and Lord Palmerston flinched with him. On November 20, 1862, Mr. Adams, who knew nothing of what had gone on within the Cabinet, wrote to Earl Russell a powerful despatch, in which, while disclaiming an intention to imply that Her Majesty's Government countenanced the violation of her laws, he pointed out that the *Alabama* had been built, armed and manned by Englishmen; that, though the purpose for which she was designed was well known, she had been permitted to sail without any of the usual formalities; and that since she had not been seized. If this were to go on, he said, peace between neighboring countries "would be rendered by it almost impracticable." Therefore he demanded, in the name of his Government, redress for past injuries and protection for the future.

Earl Russell reflected upon this letter for a month and then replied that, so far as the past was concerned, as he had done his best under the law as the law was interpreted by the Counsel for the Crown, he could not admit the right of any foreign sovereign to call him to account. Imperfections in a municipal statute were not matters open to discussion. Therefore he declined to entertain claims for compensation for injuries consequent on the escape of the *Alabama*, but, touching the future, he made concessions. He admitted frankly that the "Government, after consultation with the Law Officers of the Crown, are of opinion that certain amendments might be introduced into the Foreign Enlistment Act, which . . . would have the effect of giving greater power to the Executive to prevent the construction, in British ports, of ships destined for the use of belligerents." Before, however, submitting such amendments to Parliament, Earl Russell proposed that my father should ascertain whether the United States would make similar alterations in their law, so that the changes might "proceed *pari passu* in both countries."

Without question when Lord Russell made this proposition he was sincere, but when he tried to carry it into effect he found himself as impotent as he had been when he tried to induce intervention. His letter to Mr. Adams offering to amend the

law was dated December 19, 1862, but on February 14, 1863, he wrote to Lord Lyons that the project of amending the Foreign Enlistment Act had been abandoned, as the Cabinet did not see how the "law on this subject could be improved." To the end of his life Lord Russell never seems to have understood what ailed the world in his latter days. He protested and probably believed that he had always intended to do right. In reality he was the victim of a condition of social dissolution which brought the lawyers forward, at whose head stood Lord Westbury.

Very uniformly, when a ruling class is tottering and no longer dares to use physical force, it seeks aid from the courts, and in 1863 the English aristocracy obeyed this general law. Not venturing upon an open war with America for fear of trouble at home, they resorted to fraud to compass their object, and to work a fraud upon their own laws they had to call in the lawyers. Thus, from the hour when Great Britain definitely abandoned the offensive, Mr. Adams found himself pitted against Lord Westbury in particular, and the bench and bar of England in general. In this field Mr. Adams fared well enough, but Lord Russell fared ill, for Earl Russell had no training as a lawyer and was always committing indiscretions. He began with one of the worst.

On March 26, 1863, Mr. Adams told Earl Russell that "England was at war with the United States, while the United States were not at war with England," and then pressed on him this alternative; either the law is "sufficient . . . and then let the British Government enforce it; or it is insufficient, and then let the British Government apply to Parliament to amend it. ✓

"I said that the Cabinet were of opinion that the law was sufficient. . . . That the British Government had done everything in its power to execute the law; but I admitted that the cases of the *Alabama* and *Oreto* were a scandal, and in some degree a reproach to our laws." <sup>1</sup>

After this admission the Foreign Office could not refuse to test the efficiency of the Foreign Enlistment Act, which the Cabinet had declined to amend on the authority of Lord Westbury, who advised them that it was enough.<sup>2</sup> On March 30, 1863, four days after this interview, Mr. Adams denounced the

<sup>1</sup> *Lord Russell to Lord Lyons*, March 27, 1863.

<sup>2</sup> *Adams to Seward*, February 13, 1863.



*Alexandra*. Lord Russell laid the evidence before the Law Officers of the Crown, and on April 4 he received an opinion, based on the decision of the Supreme Court of the United States in *United States v. Quincy*, 6 Peters, 448, that the *Alexandra* should be seized under the Foreign Enlistment Act. And seized she accordingly was the very next day. The issue had now been narrowed to this: Could Mr. Adams goad the British Government into protecting the United States either with or without the sanction of law; or would the gentry so far succeed in paralyzing the law, and in preventing the Government from overstepping it, that war would follow from inertia? This issue had to be fought out primarily in the courts, and, as the crisis approached, no Southern sympathizer, who respected his political standing, cared to make himself conspicuous in the parliamentary arena. John Bright awed the House of Commons, and beyond the precincts of Westminster matters had gone ill with those who had interfered. Lord Palmerston had made a sally, and in one short day had had enough; Earl Russell, with his moral garments in tatters, as he himself admitted by describing his administration as a scandal, was trying to cover his reputation with the shreds that remained; while Gladstone, the greatest orator which the gentry produced during the nineteenth century, had so exposed himself at Newcastle that his own chief had turned and rent him. All were dumb. A situation could hardly have been graver, and at this juncture Lord Westbury's influence predominated. To this several causes contributed. Not only was the Chancellor the official adviser of his colleagues upon the law, but his range of activity was wide. He could intrigue in the Cabinet and in Parliament, with the bench and the bar, and in intrigue Lord Westbury had few rivals. Whatever Lord Westbury's motives may have been, had he been regularly retained to emasculate the English neutrality laws, he could hardly have worked harder or more insidiously, while advancing to a predetermined end by a series of premeditated steps. He first suppressed the Duke of Argyll's proposal to arrest the *Alabama* in the colonies, he next prevented the amendment of the Foreign Enlistment Act, although the Law Officers of the Crown had advised it,<sup>1</sup> and

<sup>1</sup> *Earl Russell to Mr. Adams*, December 19, 1862. *Adams to Seward*, February 13, 1863.



lastly he evolved a subtle legal theory with the apparent purpose not only of absolving Great Britain from responsibility for any abuse, however flagrant, of her territory by the Confederacy, but for preventing her from submitting to arbitration any claims for reparation for the injury which the United States might endure thereby. According to Lord Westbury the whole question hinged not on what men did, but on what they thought. This was his celebrated doctrine of *animus*. British subjects might build, equip, arm and man fleets of cruisers, and send them to sea to be sold to the South for purposes of war, if it could not be proved that in such transactions these Englishmen had acted as agents of the South, and not as speculators. If they speculated in battleships as merchants, without pre-existing contracts which made them agents, all was lawful. By parity of reasoning, Great Britain had no responsibility for her legislation or for her police beyond that of defending the good faith of her ministers.

Great Britain, acting as a neutral, might be mistaken, she might be remiss, she might do what she should not have done, or she might neglect to do what she should have done, — this was immaterial. The only question between the nations was, “whether, from beginning to end,” Great Britain “had acted with sincerity.” He pressed this doctrine in his speeches in Parliament, and he laid it down from the bench.<sup>1</sup>

The inference is almost resistless that Lord Westbury intended not only to legalize the grossest of all frauds by encouraging the perversion of evidence, as the Chief Baron of the Exchequer afterward pointed out, but also to make the submission to arbitration of claims arising from such frauds practically impossible. Bethell was a singularly astute modern man, who could hardly have failed to perceive from the beginning whither his reasoning led, nor did he shrink from following that reasoning to the end. In 1869 Mr. Sumner relied on him as an authority for his law when he originated the “indirect claims”; so did Mr. Davis at Geneva. But Lord John Russell was another matter. Lord John, whose mind was never one of the most lucid, and who was beside a relic of a bygone age, saw nothing absurd in declaring categorically, first, that Eng-

<sup>1</sup> Hansard, *Parliamentary Debates*, Third Series, cxci. 347, 348. *Ex parte Chavasse*, 12 *Law Times*, New Series, 249.

land alone must be the judge of her domestic legislation; of then alleging, as an excuse for not arresting pirates fitting in English ports, that he had no power to do so under English statutes; and finally of refusing compensation for the injury those pirates wrought on a friendly people, because he could not allow the good faith or the good conduct of English ministers, or the competence of English lawyers, to be impugned by a foreign nation. Yet, according to Westbury, the good faith of Lord Russell and of Sir Roundell Palmer was the only vital matter in issue.

Surely no one in modern times, save a British aristocrat of the Waterloo generation, could have been capable of such arrogance.

It is nothing to the purpose that his arrogance escaped Earl Russell, or that he failed to understand how he had come into a position where he had to be arrogant to defend himself against a criminal accusation. Earl Russell was an old man who had been born and bred in an atmosphere in which arrogance toward foreigners was as natural as it was in 1861 in a Southern planter toward blacks. The fact remains that, but for Bethell, Earl Russell could not have been accused of fraud.

When the *Alabama* escaped through what even Earl Russell, toward the close of his life, admitted to have been his own slackness, he would have atoned for his fault by seizing her in the colonies, but Bethell stopped him. When Mr. Adams urged him to amend a statute under which such outrages as the escape of the *Alabama* could be perpetrated, he assented, and would have brought a bill into Parliament to strengthen the Foreign Enlistment Act, but Bethell interposed. Lastly, when it came to submitting the claims of the United States to arbitration, Earl Russell found himself confronted with Lord Westbury's doctrine, that the only matter in issue was his own honesty. That was why *due diligence* and *good faith and honesty* were always confounded in his mind.

Such was Lord Westbury, brought forward by the decay of the aristocracy to a position of leadership in their contest with democracy; nor in all England, perhaps, could a man of equal parts have been found less apt to lead with credit. Unhappily for them, also, the aristocracy were hardly more discreetly



served by those common law judges on whom they relied to manipulate the law to meet their necessities.

Among the survivals of an arrogant age, one of the stiffest in the year 1863 was Sir Frederick Pollock, Lord Chief Baron of the Exchequer. Although Sir Frederick did not spring from noble lineage like Lord John, he was more reactionary, having entered Parliament in the Tory interest, and having served as Sir Robert Peel's Attorney-General, whereas Lord John had been a Whig from birth. Sir Frederick was a year older than Lord Palmerston, and was turned of eighty when on June 22, 1863, he sat with a jury to hear the case of the *Alexandra*. Lord Selborne, who represented the Government in the prosecution, first as Solicitor, and afterward as Attorney-General, has hinted that Pollock's mind had become impaired,<sup>1</sup> and perhaps it is charitable to assume that his memory had failed, for the choice lies between this and suspecting that he tried deliberately to falsify the record. Still, it must be conceded that, in the contest which ensued between him and Sir Roundell, he showed no feebleness but, on the contrary, routed his antagonist. Throughout the American war the rock on which the British aristocratic party, both political and legal, split, was incoherence. As Lord Palmerston's Cabinet never could unite on any aggressive policy, so neither could the lawyers unite on any theory touching the law. In this cause Pollock fell foul of Bethell, denouncing his doctrine of *animus* as fraudulent, and he did so, apparently, only to save himself from discredit by discrediting the Government, when both wished to suppress the North.

I think it probable, from what subsequently occurred, that during the litigation Westbury may have explained to Pollock his theory of *animus*. I am inclined to this surmise because of Pollock's familiarity with notions which he would have been unlikely to originate, and which he stated in language paraphrasing that used by Lord Westbury afterward in *Ex parte Chavasse*.

Be this as it may, Pollock's conduct at this trial created a scandal which at the time almost equalled the scandal of the escape of the *Alabama*, and increased very sensibly that excessive weakness of the Palmerston Government which during

<sup>1</sup> *Memorials, Family and Personal*, II. 446.

the winter of 1864 threatened to induce war through simple inertia. This was, of course, what Southerners themselves and the more extreme of their sympathizers in England wanted, but it was a result which could only be attained by a prostitution of the courts, and a degradation alike of bench and bar. Nothing could be plainer than the issue between the two countries, as Sir Roundell Palmer himself presented it in this very cause:

If there be a war, in which, though the Sovereign of Great Britain professes neutrality, yet a great number of the subjects act in a manner directly contrary to it, . . . by organizing naval equipments, it is perfectly plain that the result will be this: a state of things will be produced which alters the balance of power practically, . . . something is done which throws a power from the neutral country into the scale of one of the belligerents against the other, and which makes the belligerent who suffers by it say, I care not what your Vattel, or Grotius, or Puffendorf may say; I find that I am practically suffering from this, . . . so that it is better worth my while to go to war with you too, and to have it out openly, than allow this state of things to go on.

The Attorney-General then supposed a war between England and France, with the United States neutral and fitting out naval expeditions for France, and suggested that possibly, the United States being powerful, England might hesitate.

But it might, I think, be quite conceivable and possible that we in that case, as we, I think, have done in all similar cases in the course of our history, might say: We will not endure it, and if this goes on, we will rather go to war with you than let war be carried on practically against us from your shores under pretence of neutrality. That we should do that with a weak power like Sweden, can any human being entertain a doubt? These are the dangers that have to be provided against.

Such bluntness shocked the morals of Sir Frederick, who could not tolerate, in his court, that counsel should suggest that England had ever done that to a weak power which she would not do to a strong. So he scolded Sir Roundell. And yet Sir Frederick knew as well as any other man that, for centuries before the war of Secession, Great Britain, as a belligerent, had



ruthlessly trampled upon all weak neutrals, sometimes seizing their commerce like a common pirate, sometimes firing on their frigates and taking from them their crews, sometimes blockading their harbors, and sometimes burning their capital cities. In short, there was no outrage on the weak which Great Britain had not gloried in perpetrating, and she reached the acme of her violence in the wars of the French Revolution and of the First Empire, which began soon after the adoption of the Constitution of the United States in 1789. During those wars the feeble republic of the United States suffered much from both France and England, and it had devolved upon General Washington to hold the balance between the two. As General Washington's Secretary of State, Mr. Jefferson conducted a correspondence on neutrality which ever afterward ranked as a classic, and, for a full generation after its foundation, the Supreme Court of the United States had been deeply engaged in considering the law upon this class of questions, so that when Sir Frederick came to expound the Foreign Enlistment Act, in the trial of the *Alexandra*, the American authorities were recognized as the standard. Of British authorities on neutrality there were few or none.

It followed that when English judges like Bethell and Pollock, in serving the aristocracy, undertook to emasculate the Foreign Enlistment Act, their first anxiety was to explain away these American authorities. This they might possibly have done without too much ignominy, had they taken care beforehand to agree upon some theory of construction. Instead of doing so they quarrelled, with the result that finally Sir Frederick roundly accused those who followed Lord Westbury's doctrine of trying to perpetrate a fraud, while the Law Officers of the Crown more than intimated that Sir Frederick had deceived them by direct falsehood.

On these facts there can be no dispute, as they are all matters of record; nor can there be any dispute as to the character of the measures taken by Lord Westbury to prevent the amendment of the Foreign Enlistment Act. The Lord Chancellor of England declared the Foreign Enlistment Act sufficient, at the moment when the Chief Baron of the Exchequer stated from the bench, that, were the statute construed as Lord Westbury would construe it, a fleet of ships might be sailed through

it. And it was by denouncing the Lord Chancellor's construction as fraudulent, that the Chief Baron defended the liberation of the *Alexandra*. That the wrangle was disgraceful was shortly admitted by the English Parliament and by the English people, as one of the first acts of the Conservatives on attaining to power was, in January, 1867, to appoint a commission to so revise the law touching neutrality, that such scandals could not occur in future. To make all this clear, I must go at large into the *Alexandra* litigation.

When the long wars began and Washington issued his proclamation of neutrality, it was universally accepted as an axiom, that if, when two nations are at war, a third assists one, by participation in hostilities, to the detriment of the other, that third nation becomes a party to the conflict, and may be treated as an enemy by the country which is aggrieved. The principle was plain; the difficulty lay in defining what acts constituted a participation in hostilities. With this class of questions Washington and Jefferson had endless difficulties; for they soon found that neutrals, like other people, must live, and to live must trade, and that all trade would be substantially cut off if giving aid to one belligerent were to participate in hostilities. For example, no aid can be more effective than food and munitions of war. But to neutrals perhaps the most tempting of all branches of trade was trade in munitions of war, which the belligerents often had to buy regardless of price. This had always been so, and had been recognized as legitimate within certain limits, ever since the Venetians sold material of war to the Saracens to use against the Crusaders, although that particular commercial enterprise the Church had denounced as excessive.

On the other hand, the belligerent, who suffered from these sales, claimed the right to seize the so-called *contraband of war*, wherever he could find it in transit, and thus, at last, the United States found themselves obliged to draw a line between a commercial venture in material of war, which was not a breach of neutrality and therefore innocent, and an armed participation in the war by her citizens, which was a crime. For instance, it being admitted that American citizens might sell arms and gunpowder to a belligerent, and also a ship, provided the ship were a merchantman, was it or was it not legitimate for an



American to build and arm a ship, and sell it as a speculation to a belligerent, knowing that the ship, if sold, would be used to cruise against the commerce of a friendly power? Or, putting it in other words, was a cruiser sent to a belligerent *contraband of war*, whose sale the Government might countenance, or was the escape of such a ship from an American port a breach of neutrality? As a rule both the American diplomatic correspondence touching neutrality, and the rulings of the American courts, were remarkably sound; but on one occasion Mr. Justice Story indulged his love of writing legal treatises instead of legal opinions, not only to the inconvenience of Mr. Adams, but to the mortal peril of the United States. Justice Story provided Lord Westbury and Sir Frederick Pollock with their best argument, and also with the weapon with which they did most of their mischief.

After the peace at Ghent in 1814, a certain American privateer, named the *Monmouth*, had been dismantled at Baltimore, and having been rerigged and partially rearmed was sent by her owner, loaded with contraband of war, to Buenos Ayres, to be sold, if possible, to the Government of that revolted colony, in her war of independence against Spain. The Spaniards, afterward, did not deny that the sending of this ship from Baltimore to South America was a genuine commercial speculation, made without previous contract or understanding with the insurgent Government. In Buenos Ayres the supercargo made a bargain, and, having sold the ship to the Government of Buenos Ayres, made no objection to the reenlistment of the crew, and to her return to Baltimore to add to her armament and to obtain more men. Having done this, she sailed again from Baltimore as a commissioned ship of war belonging to Buenos Ayres, named *Independencia*, to capture Spanish merchantmen, and among those which she captured was the *Santissima Trinidad*, which she took into Norfolk. There the Spanish Consul began suit for restitution of prize on two grounds: first, because the *Independencia* had originally escaped from Baltimore in violation of the neutrality of the United States; and, secondly, because, after her return to Baltimore and before her capture of the *Trinidad*, she had unlawfully augmented her armament. The court decreed restitution on the second ground, as being clearly established, and had

Story confined himself to the point in issue, all would have been well. But so simple a disposition of an interesting case did not content the learned justice. He went into a discussion to show that originally the *Monmouth* had been sent to Buenos Ayres not as a cruiser intended to participate in the war, but as a commercial venture, — an article to be sold, in a word, like any other munition of war: that, in fine, she was contraband of war, and that therefore her first departure was innocent, so far as any violation of United States statutes was concerned.

The question as to the original illegal armament and outfit of the *Independencia* [that is to say, of the old American privateer, the *Monmouth*] may be dismissed in a few words. It is apparent that, though equipped as a vessel of war, she was sent to Buenos Ayres on a commercial adventure, contraband, indeed, but in no shape violating our laws or our national neutrality. If captured by a Spanish ship-of-war during the voyage, she would have been justly condemnable as good prize, for being engaged in a traffic prohibited by the law of nations. But there is nothing in our laws, or in the law of nations, that forbids our citizens from sending armed vessels, as well as munitions of war, to foreign ports for sale.<sup>1</sup>

The British statute of 1819, for the preservation of neutrality, was founded on, and was, in substance, the same as the American statute of 1818, so that an interpretation of the one would generally fit the other, and the British enactment forbade any subject either "to equip, furnish, fit out or arm," or to procure or assist in the equipping or arming, of any vessel "with *intent* to cruise or commit hostilities against any . . . State . . . with whom His Majesty shall not then be at war." Under such a statute the first point to determine was whether a ship of war could be built by a neutral and sold to a belligerent at all, and Justice Story had certainly held in 1822, in the case of the *Santissima Trinidad*, that the *Monmouth*, a war-ship equipped, armed and even manned at Baltimore, might be sent to Buenos Ayres and sold, there being no pre-existing contract touching the building or sale; and that the only resource of Spain was to capture the *Monmouth* in transit, if she could.

Had the Confederates been well advised in 1861, when they began building their navy, they would have kept well within

<sup>1</sup> The *Santissima Trinidad*, 7 Wheaton, 283.



this decision, but over-confidence was always their bane, and they took little or no pains to disguise their transactions either in Liverpool or elsewhere. Therefore the Government had no difficulty in proving, what amounted to, Confederate ownership, so much so that such ownership was in substance admitted. Consequently, when the *Alabama* was ready for sea she could not sail openly, as the *Monmouth* had sailed, as contraband of war. She had to be smuggled out of England as an unarmed ship, and she took her arms afterward from a tender in a foreign port. So with the *Alexandra*, the defence called no witnesses to deny that the ship was built under a contract with the Confederate Government. They rested on the proposition that she was "unarmed" and "unequipped." Before a judge of a certain kidney, sitting with a Liverpool jury, such a subterfuge might answer well enough in the matter of a wooden gunboat which might by a stretch of the imagination be used for trade; but it was by no means certain that, even with such advantages, it would hold water in a process against iron-clad battleships provided with steel rams to be used to sink an enemy, independent of artillery, like those the Lairds were then completing in the Mersey.

Lord Westbury, who was an astute lawyer, proposed to stop this bungling by concealing Confederate ownership, and passing the ship off either as belonging to some foreign principal other than the South, or as the property of an Englishman, who held it for sale, upon speculation, to whomever might care to buy, consequent on completion and departure. If only the Confederate ownership were disguised, Lord Westbury felt confident of his case, because he knew that it would be impossible to prove that a secret intent to participate in the war had existed in the minds of Englishmen who chose to deny it. This would bring the rams within the ruling of Story in the *Santissima Trinidad*, and this he thought would suffice. Lord Westbury's difficulty lay not with the Foreign Enlistment Act, which he had carefully prevented Lord Russell from amending because it served his purpose so well, but with Sir Frederick Pollock, who was not only very dull but very obstinate, and was determined at any cost to acquit the *Alexandra*.

The *Alexandra* was not a very powerful or important ship, and in contracting for her and building her Captain Bulloch had

been careless. When he came to build the rams, he used extreme caution, covering the ownership most elaborately. Here lay the distinction between the two cases. Evidence which would serve to liberate the *Alexandra* would not clear the rams. This Lord Westbury must have known, and he would have risked the *Alexandra* to make sure of the rams, while Pollock, who was quite impracticable, seems to have cared for nothing but the verdict in the case in which he was interested. Hence the split between the two judges and the scandal which so affected English judicial process that when Lord Russell came to deal with the rams, he had to cast aside all regard for law and act despotically.

Had Lord Westbury presided at the trial of the *Alexandra*, there would have been no scandal. He would have managed the case differently. Of this there can be no doubt. In April, 1865, just as the war was closing, in the case of *Ex parte Chavasse*,<sup>1</sup> Lord Westbury went out of his way to explain his views. Though not called upon to do so, he then expressed the opinion that a British subject might lawfully build, equip, arm, and man a ship of war, and might send her from a British port to any point he chose beyond British jurisdiction, and there sell her to a belligerent whom he knew to be ready and waiting to buy her, provided the Government could not prove that in these transactions he had acted as an agent and not independently. How effective this construction of the law would have been, had it been adopted earlier, is proved by the effect it had even at that late hour. After her liberation in Liverpool, in 1864, the *Alexandra* was rearrested in the Bahamas, and though evidence of armament and the like was clear enough against her, she was again liberated by the colonial Vice-Admiralty Court for reasons which are better stated in the words of the local Attorney-General and of the Governor than in mine. The Attorney-General wrote in explanation of his failure: "The judge . . . required a description of evidence which it was impossible for me to procure, and which, I venture to add, will be found alike impracticable in any other case of forfeiture under the same statute." While Governor Rawson in transmitting the documents to Mr. Cardwell observed with feeling:

<sup>1</sup> 12 *Law Times*, New Series, 249.



Moreover, if Lord Westbury's *dictum* be accepted, that it needs "proof of an agreement, understanding, or concert with a belligerent Power" to establish a violation of the Foreign Enlistment Act, it will be almost impossible to attempt to enforce the law. Volunteer cruisers may be equipped and manned in swarms, with no power on the part of the Government to detain them in or out of British waters, and with a certainty that as soon as they reach the belligerent country the necessary agreement will be eagerly made, and all the evils would arise which the Act of 1819 was intended to prevent.<sup>1</sup>

Because of Lee's surrender the colonial government did not appeal from this judgment, but in due course their despatches were received by Earl Russell, who turned them over to Sir Roundell Palmer, who was still Attorney-General. Sir Roundell found himself in what would have been an embarrassing position had the war not ended, as he had taken something very like Lord Westbury's ground in the *Alexandra* case, for doing which Sir Frederick had savagely attacked him. As it was he contented himself with observing that though the Attorney-General of the Bahamas might have "exercised a sound discretion . . . in declining to appeal," yet "we desire not to be understood as expressing our agreement either with the general reasoning of the judgment, or with the construction placed by it on the word 'intent' in the Foreign Enlistment Act."<sup>2</sup> It is also noteworthy that this opinion repudiating Lord Westbury and *Ex parte* Chavasse was written on July 31, 1865, and that on July 4 Lord Westbury had resigned his office because of a vote of censure of the House of Commons. The opinion of Judge Doyle in the Vice-Admiralty Court was delivered on May 30, 1865, after Appomattox, it is true, but still six weeks before Bethell's disgrace. Whether Sir Roundell on July 31, 1865, would have been so clear as to the error in Lord Westbury's judgment, had Lord Westbury still been the Lord Chancellor of the administration of which he was Attorney-General, is a matter for speculation.

<sup>1</sup> Appendix to the *Case presented on the part of the Government of Her Britannic Majesty* (at Geneva), II. 286, 288.

<sup>2</sup> *Law Officers of the Crown to Earl Russell*, July 31, 1865. Appendix to the *Case presented on the part of the Government of Her Britannic Majesty* (at Geneva), II. 303.

*Part II.*

On June 22, 1863, on information filed by the Attorney-General, the cause of the *Alexandra*, for violation of the Foreign Enlistment Act, came on for trial at Liverpool, before Chief Baron Pollock and a special jury. Sir William Atherton, Attorney-General, Sir Roundell Palmer, Solicitor-General, and Sir Robert Phillimore, Queen's Advocate, were the principal counsel for the Crown. Sir Hugh Cairns<sup>1</sup> led for the claimants. The Attorney-General opened the case to the jury.

All these counsel were among the ablest lawyers of England, and all were as well acquainted with the American decisions as were Lord Westbury or Sir Frederick. The Law Officers of the Crown understood perfectly the necessity of distinguishing the case of the *Alexandra* from that of the *Santissima Trinidad*, and they felt confident that, upon the evidence, they could do so, since the ownership of the *Alexandra* by the Confederate Government was public and, in substance, undisputed. Sir Frederick, on his side, was fully determined that no such distinction should be made before him, and wrangling between the judge and counsel began almost immediately. The weak point in the Confederate case was the recklessness with which Confederate officers had swaggered about Liverpool talking of the ship they were building in Miller & Sons' yards, and the equal recklessness with which Miller & Sons had habitually recognized these Confederates as their principals. The facts were so notorious that Sir William, in his information, alleged with confidence, that the *Alexandra* had been built and "equipped" within the United Kingdom in order to be employed "in the service of certain foreign States, styling themselves the Confederate States of America, with intent to cruise and commit hostilities," and so on with the usual verbiage of an indictment. He did not assert that she had been "armed." He drew his information expressly to exclude the pretence that the *Alexandra* had been built like the *Monmouth*, as a mercan-

<sup>1</sup> Hugh McCalmont, first Earl Cairns (1819-1885), one of the most eminent English jurists of the nineteenth century. He was elected member for Belfast in 1852; appointed Solicitor-General by Lord Derby in 1858; Attorney-General in 1866; and Lord Chancellor by Disraeli in 1868. It was on this occasion that Lord Chelmsford protested that he had been dismissed to make way for Cairns "with less courtesy than if he had been a butler."



tile speculation. He rested on the fact that she had been built by the Confederate Government in England, as a war-ship designed to "cruise" against the United States, which would be, he argued, a clear breach of neutrality. On his side Sir Frederick perceived that if he permitted the Government to ask for a verdict on this ground, the case was lost. He therefore intervened very energetically. He undertook to dragoon the Attorney-General into admitting that if a British subject had a right to build a war-ship to sell to a belligerent at all, it made no difference whether he built the ship as a speculation on his own private account, or whether he built her on an order from the belligerent who needed her. The dialogue on this point between the counsel and the judge is so typical of the temper of the time that it is worth extracting *verbatim*.

Sir Hugh Cairns had been speaking and had been contending, on the authority of Story in the *Santissima Trinidad*, that a British subject might lawfully build, fit out, arm and even man a war-ship, and sell her to one of two belligerents. To this the Attorney-General replied that such a doctrine might possibly be relevant if it were supported by evidence, but in this case Sir Hugh could not pretend that the *Alexandra* had been built as a speculation, since, though he had the builders and owners at hand he had called no witness to contradict the testimony presented by the Government, which tended to show that she had been built on order, and under the inspection of officers of the Confederate navy. Hence, he insisted, a conclusive presumption arose "that the vessel when completed should not be sold, but should at once proceed to be employed in the service of . . . the Confederate States."<sup>1</sup>

*Lord Chief Baron.* Do you admit that a ship-builder could sell a vessel to either of the belligerent parties?

*Mr. Attorney-General.* I say that there was no intention to sell. . . .

*Lord Chief Baron.* I am asking with a view to obtaining some information as to what your opinion of the law is. I ask you whether, in your opinion, it is lawful for a ship-builder to build . . . a vessel capable of being turned into a war-like vessel, . . . with a view to offer it for sale indifferently to one or other of the belligerent parties? . . .

<sup>1</sup> A report of this trial is to be found in the *Case of the United States* (at Geneva), v.

*Mr. Attorney-General.* My object in not wishing to bind myself to any conclusive answer is this, that, as it appears to me, the facts and circumstances of the present case give no rise at all —

*Lord Chief Baron.* I am not quite sure of the facts because you did not give me an answer; if you give an answer, I should put another question, and then you might perhaps see that it was perhaps very germane to the inquiry. I have no hesitation in saying that, according to all the authorities and all the decisions that we can get at, a ship-builder has as much right to build a ship and to sell it . . . to any belligerent parties, [as] the maker of any sort of cannon or muskets, or pistols, or anything else. It is laid down in Kent's *Commentaries on American Law* that it is the right of neutral subjects to supply both belligerents with arms, gunpowder, and all munitions of war; to which I add, why not ships? . . .

*Mr. Attorney-General.* I do not controvert the proposition, nor do I controvert the doctrine laid down in the two cases of the *Independencia* [The *Santissima Trinidad*] and the ship *Alfred*, . . . which was cited this morning. . . .

*Lord Chief Baron.* Apparently, then, you concur in what I state?

*Mr. Attorney-General.* I do not deny those authorities, but I distinguish them very much indeed from this case. I say that they have no bearing on the present case. The present case I put forward, as it was put forward at the outset, as being a case in which a particular intent is discovered to have existed, and I prove —

*Lord Chief Baron.* The act does not say that it is unlawful to build a vessel with that intent.

*Mr. Attorney-General.* I shall come to my learned friend's observations on these various points in their order.

The Lord Chief Baron tried to force the Attorney-General to admit the soundness of Story's *dictum* in the *Santissima Trinidad*, so that he might go on to argue that there could be no difference between building on speculation and on order, and that if a man might do the one he might equally well do the other. If Pollock could obtain this admission from the Government, he saw before him all the yards of England open to the Confederates. The Attorney-General saw it too, and declined to commit himself, although he was shyer of disputing the doctrine of the *Trinidad* than he might have been had he felt sure of the Chancellor. What Sir William did was to evade a direct answer and pass as fast as he could to Sir Hugh Cairns' second proposition. Sir Hugh contended that, even supposing he admitted the *Alexandra* to have been built expressly for



the Confederates, yet to be guilty she "must be a fully armed vessel" when about to leave port. No, replied Sir William, that is not so.

I do not pretend that the vessel was armed. The question was whether the ship when seized had been either "equipped," or "furnished," or "fitted out," or "*armed*." The statute, he maintained, indicated an alternative.

*Lord Chief Baron Pollock.* Certainly my present impression is that they [the words] all mean precisely the same thing. . . . To equip a ship of war you must furnish it with arms. . . . I apprehend that all these words mean substantially the same thing, whether you call it "equip," or "furnish," or "fitting out," or "arming." . . .

This was a directer attack on the statute than the other; but, as soon as Sir William could silence the Chief Baron long enough to complete a sentence, he pointed out to him that the crime consisted not only in "equipping," but in attempting to "equip," and that it would be enough if this "attempt" were proved.

But, [more convincing than this,] if one might, in addressing the jury, advert to the consequence of such a construction being adopted [as that contended for by the defence and supported by Pollock], it would be very easy to show that if it were to be adopted on authority the Foreign Enlistment Act would be a dead letter, and might as well be thrown into the fire or repealed. . . . We have, as a matter of evidence before us in the case, the history of the *Alabama*, . . . He [Sir Hugh Cairns] says that to constitute a violation of this section the vessel must be armed. . . . What would be the consequence of this construction? We do not need to draw on imagination, because we have the example of the *Alabama* staring us in the face. My learned friend stands on the word "armed." As long, therefore, as you stop short of arming . . . the executive cannot interfere. The vessel cannot be seized. . . . Now, then, take the case of the *Alabama*. . . . We know, in point of fact, that she obtained her armament at Terceira, but Terceira is, for the purpose of the present observation, merely a place out of the Queen's dominions. She would have obtained her armament equally well out of the Queen's dominions if there had been a tender lying with that armament in the Irish Channel, four miles say from the nearest point of the English coast, and of course an equal or greater distance from the Irish coast. Now suppose that to have occurred, the British

Government to be informed on credible and incontestable evidence—I have a right to take it so far that the *Alabama* . . . has been built for the express purpose . . . that she shall, as soon as safely she can out of reach of British law, take on board her armament, . . . and proceed on the operations of a ship of war— . . . supposing that to be done once, . . . and then supposing the same thing to happen the next day or the next week, a similar ship, a similar destination, a similar preparation, and a tender . . . lying outside . . . to furnish and complete the armament; and if you suppose that such instances recurring . . . and the officers of the British Government to be distinctly informed of them, . . . and yet no proceeding taken to prevent the departure of any one of those vessels from the British port—I ask you whether the provisions of this section would not be rendered entirely inoperative . . . almost under view of the officers and ministers of that law? I then appeal to the language of the statute. That is an observation to my Lord. I find that “arming” is used as an alternative expression. . . .

*Lord Chief Baron Pollock.* I have got the word “equip” in Webster’s Dictionary: “Equip, to furnish with arms, or a complete suit of arms for military service.” . . .

Then the Attorney-General cited, in support of his contention, the case of *The United States v. Quincy*,<sup>1</sup> in which the Supreme Court held that in an indictment for attempting to fit out or arm the privateer *Bolivar*, it was not necessary to prove that the ship had been actually armed to justify a verdict of guilty. And so presently the Attorney-General closed his address and the presiding judge charged the jury. Over this charge,<sup>2</sup> at a subsequent period, a scandalous wrangle took place, the Chief Baron repudiating his own words, and counsel pressing him with them until he complained that no judge in his time had been so treated. And indeed, at the present day, such an address as Pollock then made seems incredible, and it would now naturally be assumed that there had been errors in the report. But there can have been no error, for the language which Sir Frederick Pollock denied was reprinted *verbatim* by the British Government for presentation as evidence before the Tribunal at Geneva, and those documents were prepared after mature deliberation, under the direction of the Lord

<sup>1</sup> 6 *Peters*, 445.

<sup>2</sup> The charge is to be found in Appendix 3 to the *Case presented on the part of the Government of Her Britannic Majesty* (at Geneva), p. 53.



Chancellor, Lord Hatherly, and of Sir Roundell Palmer, counsel in the *Alexandra* case, who in the autumn of the year 1872, after the award at Geneva, succeeded Lord Hatherly as Lord Chancellor in Gladstone's Cabinet.

After some preliminary observations, the Chief Baron quoted the words of Justice Story in the *Santissima Trinidad*, and added that, in his opinion, the subjects of a neutral power might lawfully supply a belligerent with munitions of war, "whatever can be used in war for the destruction of human beings."

Well, gentlemen, why should ships be an exception? In my opinion, in point of law, they are not. . . .

Now, gentlemen, I will state to you why I put the question I did to the Attorney-General. I said, Do you mean to say that a man cannot make a vessel intending to sell it to either of the belligerent powers that requires to have it? . . . Is that unlawful? The learned Attorney-General, I own, rather to my surprise, declined giving an answer to a question which I thought very plain and very clear. You saw what passed; I must leave you to judge whether there was anything improper in the manner in which I (so to express it) communed with the Attorney-General on the law, so that we might really understand each other, and that I might have my mind instructed, fitted out, equipped, and furnished, if you please, by the contents of his. Gentlemen, the learned Attorney-General declined to answer that question. But, I think, by this time, . . . you are lawyers enough to answer it yourselves. I think that answer ought to be, "Yes, a man may make a vessel." Nay, more, according to the authority I have just read, he may make a vessel and arm it, and then offer it for sale. So Story lays down.

But I meant, gentlemen, as I said then, if I had got an affirmative answer to that question, to put another. If any man may build a vessel for the purpose of offering it to either of the belligerent Powers who is minded to have it, may he not execute an order for it? Because it seems to me to follow, as a matter of course, if I may make a vessel and then say to the United States, "I have got a capital vessel, it can easily be turned into a ship of war: of course, I have not made it a ship of war at present; will you buy it?" If that is perfectly lawful, surely it is lawful for the United States to say, "Make us a vessel of such and such description, and when you have made it, send it to us."

Now, the learned counsel certainly addressed themselves very much to this view of the matter. It was said, But, if you allow this, you repeal the statute. Gentlemen, I think nothing of the kind.

What that statute meant to provide for was, I own, I think, by no means the protection of the belligerent Powers. . . . Otherwise they would have said, You shall not sell gunpowder, you shall not sell guns. . . . Why all Birmingham would have been in arms. But the object of this statute was this: We will not have our ports in this country subject to, possibly, hostile movements; you shall not be fitting up at one dock a vessel equipped and ready, not being completely armed, but ready to go to sea, and at another dock close by be fitting up another vessel, and equipping it in the same way, which might come into hostile communication immediately, possibly before they left the port. It would be very wrong if they did so, but it is a possibility. Now and then it has happened, and that has been the occasion of this statute. . . .

Now, gentlemen, I present the matter to you in another point of view. The offence against which this information is directed, is the "equipping, furnishing, fitting out or arming." Gentlemen, I have looked, so that I might not go wrong . . . at Webster's *American Dictionary*. . . . No one can complain that I refer to that. It appears there that to "equip" is to "furnish with arms." . . . And I own that my opinion is, that "equip," "furnish," "fit out," or "arm," all mean precisely the same thing. I do not mean to say that it is absolutely necessary (and, I think, that the learned Attorney-General is right in that), it is not perhaps necessary that the vessels should be armed at all points; . . . The question is, whether you think that this vessel was fitted. Armed she certainly was not; but was there an intention that she should be furnished, fitted, or equipped at Liverpool? Because, gentlemen, I must say it seems to me that the *Alabama* sailed away from Liverpool without any arms at all, merely a ship in ballast, unfurnished, unequipped, unprepared, and her arms were put in at Terceira, not a port in Her Majesty's dominions. The Foreign Enlistment Act is no more violated by that than by any other indifferent matter that might happen about a boat of any kind whatever. . . .

Gentlemen, if you think the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then that is a sufficient matter. But if you think the object really was to build a ship in obedience to an order, and in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the Foreign Enlistment Act has not been in any degree broken. . . .

*Attorney-General.* Before the jury give their verdict, perhaps your Lordship would give us an opportunity of tendering a bill of exceptions to a portion of your Lordship's ruling.



*Lord Chief Baron.* I will accept any bill of exceptions you wish to tender.

*Attorney-General.* Strictly speaking, it must be done before the verdict is given.

*Sir Hugh Cairns.* Anything in point of form we will dispense with. The convenient way would be to do it afterwards, I suppose, from the notes of the Charge.

Then the jury returned a verdict for the defendant, as they had no choice but to do, under such directions, and the Attorney-General began again.

*The Attorney-General.* Would your Lordship allow me to hand up a very brief note, so that there may be no mistake? (*Handing a paper to his Lordship.*)

*Sir Hugh Cairns.* Perhaps your Lordship will let us have a copy of it?

*Lord Chief Baron.* It need not be done now. You may wish to put it in some other shape. There will be no mistake about it.

*The Attorney-General.* I was only anxious that we should quite understand what your Lordship has ruled and laid down to the jury. That is very shortly stated. . . .

*Lord Chief Baron.* No, you have got here that if the vessel was not intended to be furnished.

*The Attorney-General.* No, my Lord, it is "furnished or fitted out."

*The Solicitor General.* Your Lordship said that the words were the same. That every one of the words required a warlike armament at Liverpool. That is the point.

*Lord Chief Baron.* Mr. Attorney-General, I will not bind you to what passes on the present occasion. There cannot be any doubt now. I cannot alter the thing, and I have no doubt that you have a very accurate note of what I have said.

*The Attorney-General.* I only wish that we should have your Lordship's concurrence now, while the matter is fresh in your Lordship's recollection.

*Lord Chief Baron.* It cannot be a question of recollection. Depend upon it there is an accurate note of what I have said.

*The Attorney-General.* Will your Lordship allow me to send in a full note from the best materials that we can get?

*Lord Chief Baron.* Certainly.

No one now can ever know whether when Sir Frederick put Sir William off he acted in good faith or with premeditated

duplicity. Probably he felt instinctively a wish to leave some avenue of escape open should he find himself later on in danger of being overruled by his colleagues. But whether this be the true explanation of his conduct or not, he certainly put Earl Russell in a position which, without much exaggeration, might be called terrific. Earl Russell had been led to expect by his counsel that, however Pollock might behave, at least the Government would be able to try to have the worst of his rulings corrected by the House of Lords; but he soon learned that no appeal was open to him unless the Government's exceptions to the rulings of the presiding judge were signed by that judge, and that Pollock would sign nothing. Thus on the one hand Earl Russell could obtain no relief from the higher courts because of Pollock's bad faith, and on the other he could not amend the statute because of Bethell's obduracy. He saw himself drifting into a condition of impotence, when it would be impossible for him to prevent Confederate battleships from issuing from every dock in England.

Yet severe as was the stress under which as rigid a man as Lord John Russell finally bent, it was as naught beside the strain which Mr. Adams endured. He alone had forced the British Government to seize the *Alexandra* and pursue her in the courts; he was even then preparing to try to force them to seize the Laird rams. He had been sent to England as a diplomat and not as a lawyer. Suddenly he became involved in a ferocious combat with a series of the most exalted magistrates upon the English bench, beside whom politicians like Palmerston and Russell were as lambs. And this conflict lasted until he closed his public life with the rout of Lord Chief Justice, Sir Alexander Cockburn, at Geneva.

When the jury trial ended with a defeat for the United States and for the Crown, the cause went over for six months before it could be concluded, to allow time for counsel to draw their exceptions to the rulings of the presiding judge, and to await the sitting of the full court to hear argument on these questions of law. Meanwhile the Confederate agents, elated by their legal success, undertook to obtain recognition from Parliament. Here they were ignominiously beaten, and then, by common consent, all men drew aside while the American Minister closed with Lord John Russell in what was one of the fiercest



diplomatic struggles of the century. The United States had determined, law or no law, to force Great Britain to seize the Laird rams.

As we look back upon the year 1863 we wonder that at that supreme moment the Confederates should have committed their cause in the House of Commons to such a champion as John Arthur Roebuck. Roebuck had never carried much weight in English public life, and he was then old, eccentric and half-crazed with vanity. He actually believed that John Bright feared him in debate. Preparatory to making his motion for the recognition of the Confederacy on June 30, 1863, Roebuck had visited Paris, had obtained an interview with the French Emperor, and had conversed with him touching the foreign policy of England and France. Precisely what passed at that interview is uncertain, but, whatever it may have been, the Emperor did not intend to have the conversation published, and subsequently repudiated Roebuck. Roebuck not only made a violent and foolish speech in the House, but he undertook to tell Parliament the views of the French Emperor as though he were a species of special envoy. The result was that Palmerston snubbed him, John Bright rent him limb from limb, and Roebuck slunk away, without even daring in that friendly assembly to ask for a division on his motion.

Four days after this debate Vicksburg surrendered, Gettysburg was won, and Laird launched the first of his two iron-clad rams. On these rams now hung the fate of the Confederacy and of the English party which supported the Confederacy. It is true that the news of the Northern victories did not reach London until the middle of the month, but for a considerable time the conviction had been growing upon Englishmen that, however brilliantly the South might fight on land, she must ultimately succumb to exhaustion were the blockade to be maintained. They knew also that the South could not raise the blockade unassisted, and that the only assistance possible was English. England might once have intervened with arms, but intervention which had failed in November, 1862, had been publicly discredited by Roebuck's grotesque incompetence. A single chance remained. Ships might sail from England powerful enough to destroy the fleet of the United States and to devastate the Northern coast. Then war would be inevi-

table, and with war with England the American Union must perish.

On July 11, during the interval between the Roebuck debate and the arrival in London of the news of Vicksburg, Mr. Adams began his attack on the Foreign Office. He had from the very outset to make it clear that he was leading up to an ultimatum, for he knew well that nothing less than the presentation of an ultimatum, however he might disguise it in phrases, would stimulate Lord Russell and Lord Palmerston to beard the vast conspiracy by which they were opposed. He began by expressing the regret he felt at having to recur to those "acts of hostility" at Liverpool which had been the subject of his remonstrances ever since his arrival. "In many preceding communications I have endeavored to set forth the facts which appear to me to prove, beyond the possibility of a doubt, the establishment on the part of the insurgents in the United States of a systematic plan of warfare upon the people of the United States, carried on from the port of Liverpool, as well as in less degree from other ports of this kingdom." Strong as his language had to be, however, he was first very careful to explain that he did not intend to imply "the smallest disposition on the part of Her Majesty's Government in any way to sanction, or even to tolerate, the proceedings complained of." But after making this concession to politeness, he stated explicitly that the excuse of lack of legal power would not be accepted by the United States as justification for a dereliction of duty.<sup>1</sup>

Fruitless as have been the greater part of the remonstrances which I have had the honor to make, I am well aware that the causes assigned for it do not relate to the want of will, so much as to the absence of power in the existing laws to reach a remedy. But, admitting this to be the case, if an injury be inflicted upon an innocent friendly nation, it surely cannot be a satisfactory reply to its complaints to say that the Government, having the will, is not also clothed with the necessary powers to make reparation for the past and effect prevention for the future. . . .

I now have the honor to solicit your attention to the evidence of the last and gravest act of international hostility yet committed. It is the construction and equipment of a steam-vessel of war, of the most formidable kind now known, in the port of Liverpool. All the

<sup>1</sup> *Mr. Adams to Earl Russell, July 11, 1863.*



appliances of British skill to the arts of destruction appear to have been resorted to for the purpose of doing injury to the people of the United States. The very construction of such a vessel in a country itself in a state of profound peace, without any explanation of the objects to which it is to be applied, is calculated to excite uneasiness on the part of those involved in a contest where only it could be expected to be made of use. But when it further appears that it is constructed by parties who have been already proved to have furnished one vessel of war to the insurgents in America, and who are now shown to be acting in co-operation with their well-known agents, . . . it is not unnatural that such proceedings should be regarded by the Government and people of the United States, . . . as virtually tantamount to a participation in the war by the people of Great Britain.

He enclosed a number of affidavits. The affidavits showed that the rams had been begun before the *Alabama* sailed on July 29, 1862, and that plans and specifications for them had been prepared much earlier. These plans and specifications a witness had seen and read at the office of Fraser, Trenholm & Co., of Liverpool, a branch of a Charleston firm called John Fraser & Co., whose head, George A. Trenholm, was the Secretary of the Confederate Treasury. Fraser, Trenholm & Co. managed the English portion of the Confederate finances. They paid the seamen on Confederate war-ships, they negotiated Confederate loans, they conducted blockade running, handled Confederate cotton, and their office was the bureau at which Captain Bulloch of the Confederate navy, who built the *Alabama*, might be seen almost daily, and where he conversed freely touching his plan of campaign. In April, 1863, George Temple Chapman, of New York, had met Bulloch at this office. Bulloch boasted to Chapman that he had already fitted out the *Florida* and the *Alabama*, and "that he was fitting out more, but that he managed matters so that he could defy any one to prove that he was fitting them out for the use of the Confederate Government." The witnesses went into details touching the size and power of the ships, the thickness of their armor, the diameter of their turrets, and the length of the ram or piercer, which they carried on their bows, calculated to be submerged about two feet, when the ships were loaded. All this and much else to like effect these affidavits contained, which Mr. Adams sent to Earl Russell not quite four

months after the famous interview of March 26, during which the British Secretary of State for Foreign Affairs had admitted to the American Minister that "the cases of the *Alabama* and *Oreto* were a scandal, and in some degree a reproach to" English law.<sup>1</sup>

Commenting on these details some months later, Mr. Seward wrote to Mr. Adams that the navy could not resist, and that "The new vessels which the Lairds are preparing must, therefore, be expected to enter Portland, Boston, New York, or, if they prefer, must attempt to break the blockade at Charleston, or to ascend the Mississippi to New Orleans."<sup>2</sup>

On July 13 Earl Russell answered Mr. Adams' note promising to do what he legally could, but he soon found that legally he could do nothing. He had lost the case of the *Alexandra*, and the quarrel between Pollock and Atherton, which was already seething, seemed likely to prevent a revision of the rulings which had amounted to a direction to find a verdict against the Crown. Nor was Lord Russell so favorably situated in regard to the rams as he had been in regard to the *Alexandra*. Bulloch, as he boasted, had learned wisdom. He had caused the Lairds to make a fraudulent conveyance to a French firm, known as Bravay & Cie., who pretended to act as agents for the Viceroy of Egypt, and all had been prepared in advance at Liverpool in anticipation of an investigation by the Foreign Office. On July 8, 1863, three days before Mr. Adams' note to Earl Russell, the Collector of Customs at Liverpool had advised the Commissioners of Customs that Mr. Dudley, the American consul at Liverpool, had asked him to detain an iron-clad built by Messrs. Laird of Birkenhead, but that he had satisfied himself, "from the inquiries I have made from the builders," that the rams "were not built for the Confederates, but are for Frenchmen who first contracted for them." In a postscript he added that the French consul had called on him to say that the ship was French property, and that he would furnish the necessary papers when she was ready for sea. Now, it happened that in the preceding February, Earl Russell had been advised by Mr. Colquhoun, the British Consul-General at Cairo, that this same Bravay claimed to be executing a ver-

<sup>1</sup> *Earl Russell to Lord Lyons*, March 27, 1863.

<sup>2</sup> *Seward to Adams*, September 5, 1863.



bal order in England from the late Viceroy for two steel-clad frigates. But Mr. Colquhoun added that he knew that the Viceroy, after visiting the docks in England and France, had decided against that type of ship. "It is not, therefore, likely he should give an order to one in the trade."<sup>1</sup>

As usual, Earl Russell referred the whole correspondence to the Law Officers of the Crown, who were altogether unmoved by such indications of fraud. On July 24 Atherton, Palmer and Phillimore advised the Foreign Office that "we are clearly of opinion that Her Majesty's Government ought not to detain or in any way interfere with the steam-vessels in question."<sup>2</sup> On July 25 Mr. Adams sent to Earl Russell further evidence confirming Mr. Colquhoun's doubts touching Bravay, and this information was supplemented by Baron Gross, the Secretary of the French Embassy, who denied all interest on the part of France. From this time forward Mr. Adams without intermission inundated the Foreign Office with affidavits, copies of letters, and details touching the movements of Confederate agents, concluding a note written on August 14 in these words: "It is difficult for me to give your Lordship an adequate idea of the uneasiness and anxiety created in the different ports of the United States by the idea that instruments of injury of so formidable a character continue to threaten their safety, as issuing from the ports of Great Britain, a country with which the people of the United States are at peace." Just seven days before this note Mr. Dudley had notified the legation that the first ram "is shipping her turrets. She no doubt can be got ready for sea in a week's time."

Earl Russell was terribly perplexed. He telegraphed to Earl Cowley at Paris, on August 22, to ask if the rams were intended for the French Government. Next day but one Cowley replied: "I beg to report that the iron-clad vessels are not for the French Government."

On August 28 Mr. Dudley wrote to the Collector at Liverpool, requesting that a guard should be put over the ram, as he was informed that the Lairds "meant to run her out to sea either to-night or to-morrow night."

<sup>1</sup> Appendix to the *Case presented on the part of the Government of Her Britannic Majesty* (at Geneva), II. 315.

<sup>2</sup> *The Law Officers of the Crown to Earl Russell*, July 24, 1863.

On August 31 Earl Russell received a telegram from Mr. Colquhoun, stating that the Viceroy of Egypt absolutely repudiated all connection with the rams. At Liverpool the true ownership was notorious. On September 4 Mr. Dudley wrote in something like despair to Mr. Seward:

If . . . we could summon witnesses and compel them to testify, the case would not be so hard. As it is, you can only obtain it in one of two ways, persuasion and bribery. The first, in a hostile community, like Liverpool . . . is almost impossible, and the last taints the evidence. . . . The newspapers comment upon the matter, and there is scarcely a man, woman, or child in the place but what knows these rams are intended for the Confederates. Among the business men on 'Change it is the leading topic of conversation. No one pretends to deny, but all admit and know, that they are for this service.<sup>1</sup>

What Mr. Dudley wrote on September 4 was not only common knowledge then, but had been trumpeted throughout England and America for many weeks. Earl Russell knew the facts as well as Mr. Dudley, so did Lord Palmerston, so did the Crown Counsel; but the Crown Counsel had had enough at the *Alexandra* trial. No power on earth could wring an opinion from them that the Foreign Enlistment Act sufficed to meet the emergency. On August 20 they wrote to Earl Russell with solemnity: "We cannot advise Her Majesty's Government to interfere in any way with these vessels. There is, in fact, no evidence capable of being presented to a Court of Justice of any intention on the part of any persons in this country, that either of these vessels should be employed in the belligerent service of the Confederate Government against the United States; even if it would have been proper . . . to act upon the assumption that the law recently laid down by the Lord Chief Baron in the case of the *Alexandra* is incorrect."

Earl Russell saw himself fairly trapped. The result had now come to be a problem in dynamics. The Minister of the United States had to develop energy enough to drive the British Government forward in spite of every obstacle which wealth, social influence and legal cunning could put in their path, or war from inertia between England and the United States must supervene. On September 1 Earl Russell gave what purported to be his irrevocable decision.

<sup>1</sup> *Dudley to Seward*, September 4, 1863.



There is no legal evidence against M. Bravay's claim, nor anything to affect him with any illegal act or purpose; and the responsible agent of the Customs at Liverpool affirms his belief that these vessels have not been built for the Confederates. Under these circumstances . . . Her Majesty's Government are advised that they cannot interfere in any way with these vessels. . . . A Court of Justice would never condemn in the absence of evidence, and the Government would be justly blamed for acting in defiance of the principles of law and justice, long recognized and established in this country.

Earl Russell indeed wrote this note on September 1, but, apparently, yielding to that weakness which finally brought the Palmerston administration almost to the point of loss of volition in American affairs, he delayed sending it so long that Mr. Adams did not receive it until about half-past four o'clock on the afternoon of September 4. During these three days Mr. Adams, who suspected that the Crown Counsel were wavering, became so uneasy that he decided to make a further effort. He therefore took advantage, as he explained to Mr. Seward, "of some depositions, of no great additional weight," to write again, on September 3.

He began by pointing out that since France and Egypt both repudiated the Laird rams no reasonable doubt could remain that on leaving Liverpool they would be "at once devoted to the object of carrying on war against the United States of America." He then added, in words which could bear but one interpretation, that though he believed that he had already stated the importance which his Government attached to the sailing of these ships "with sufficient distinctness," yet he felt it his painful duty to make known that he had in some respects "fallen short in expressing the earnestness with which I have been . . . directed to describe the grave nature of the situation in which both countries must be placed in the event of an act of aggression committed against the Government and people of the United States by either of these formidable vessels." <sup>1</sup>

<sup>1</sup> *Mr. Adams to Earl Russell*, September 3, 1863.

The precise order which this correspondence followed is of interest, since it illuminates the intellectual peculiarities of both Earl Russell and of Sir Roundell Palmer. On September 1 Earl Russell wrote to Mr. Adams: "That Her Majesty's Government are advised that they cannot interfere in any way with these

In this last paragraph Mr. Adams referred to Mr. Seward's famous instructions of the 11th of the previous July. In these instructions Mr. Seward, in considering the position taken by Pollock, after pointing out that, were the rulings of the Chief Baron in the *Alexandra* case to be affirmed and acted upon by the Cabinet, the President would be obliged to assume

vessels," because there was no legal evidence against M. Bravay, and also because "the responsible agent of the Customs at Liverpool affirms his belief that these vessels have not been built for the Confederates."

However, it happened this letter was held back and only delivered to Mr. Adams at 4.20 P. M. on September 4, as appears from his note to Mr. Seward of that date. Meanwhile Mr. Adams wrote his strong note of September 3, which was indorsed, at the Foreign Office, as received on the same day. The hour is not indicated. On September 3 Mr. Layard, the Under Secretary, wrote to the Treasury as follows:

FOREIGN OFFICE, September 3, 1863.

SIR, — I am directed by Earl Russell to request that you will move the Lords Commissioners of Her Majesty's Treasury to give directions to the Customs authorities at Liverpool to stop the iron-clad vessels at Messrs. Laird's yard at Birkenhead, as soon as there is reason to believe that they are actually about to put to sea, and to detain them until further orders. I am, &c.

A. H. LAYARD.

Also, on September 3, Earl Russell wrote to Lord Palmerston from Scotland, to tell Lord Palmerston that he had ordered the rams to be detained. Between September 1 and September 3 nothing had been received at the Foreign Office save the affidavits sent by Mr. Adams and another similar one sent by Mr. Dudley to the Custom House.

On September 1 Earl Russell had ordered Mr. Layard to write to the Treasury, that "if sufficient evidence can be obtained to lead to the belief that they are intended for the Confederate States of America" the vessels ought to be detained. This was the day on which he officially notified Mr. Adams that there was no such evidence. It follows that if Earl Russell had not been moved by the letter of September 3, then he changed his mind, since the evidence remained the same, without cause. This was not the statement made by Sir Roundell, who said emphatically in debate that "the Government had grounds for what they did."

On February 12, 1864, the day after the debate in the Lords, Mr. Adams made this comment in his diary:

"There was another debate on American affairs in the Lords, in which Lord Derby proved more successful in ferreting out the facts than on the first night. His compliment to me as having benefited both countries by assuming the grave responsibility of suppressing a despatch is a little beyond the reality. At the same time he dwells upon the series of events in the early part of September, and describes them as a diplomatic triumph, which they truly were.

"Lord Russell's reply was not quite ingenuous. He now maintains that his answer on the 1st of September was not final. The language of that note will speak for itself. To affirm that the change in the evidence within three days was such as to make a complete revolution in the tone is scarcely consistent with probability. Yet if he can make any use of such a flimsy pretence to protect himself from attack, I am content."



that no law existed in Great Britain to protect the United States, and that it was proper that Mr. Adams should know and "be able to communicate to Her Majesty's Government" what the President's views would be in that contingency, formulated this ultimatum:

If the law of Great Britain must be left without amendment, and be construed by the Government in conformity with the rulings of the Chief Baron, . . . then there will be left for the United States no alternative but to protect themselves and their commerce against armed cruisers proceeding from British ports as against the naval forces of a public enemy. . . . The navy of the United States will receive instructions to pursue these enemies into the ports which thus, in violation of the law of nations and the obligations of neutrality, become harbors for the pirates.<sup>1</sup>

Hitherto there had been no need even to consider the propriety of presenting so drastic a despatch to Earl Russell, but if Earl Russell should, after the intimation contained in the note of September 3, decline to act, Mr. Adams would have to decide whether he would proceed to extremities, or whether he would suppress the instructions and use other means. Should he decide on the latter course, and the rams escape, he would be held responsible for disobedience to orders.

That day, September 3, 1863, when Earl Russell's note declining to stop the rams, and Mr. Adams' note conveying a veiled ultimatum touching their sailing, crossed each other, marked a crisis in the social development of England and America. To Mr. Adams the vacillation of the Cabinet seemed astounding weakness. On September 8 he wrote to Seward, "The most extraordinary circumstance attending this history is the timidity and vacillation in the assumption of a necessary responsibility by the officers of the Crown." To us, who look back upon the Civil War through a vista of fifty years, "the most extraordinary circumstance" seems to be that terrible energy which enabled the United States in the extremity of her agony to coerce the nobility and gentry, the army, the navy, the church, the bench, the bar, the bankers, the ship-builders, the press, in fine, all that was wealthy, haughty, influential and supposed to be intelligent in Great

<sup>1</sup> *Seward to Adams*, July 11, 1863.

Britain. And it was as the vent of this energy that Mr. Adams, after receiving Earl Russell's letter of September 4, wrote on September 5, although despairing of success, his memorable declaration of war. Enclosing a paragraph cut from a Southern newspaper which contained the familiar threat of burning Northern ports with English-built ships, he observed as calmly as though he were summing up a mathematical demonstration:

It would be superfluous in me to point out to your Lordship that this is war. . . . In my belief it is impossible that any nation, retaining a proper degree of self-respect, could tamely submit to a continuance of relations so utterly deficient in reciprocity. I have no idea that Great Britain would do so for a moment.

Still he did not communicate Seward's instructions. He suppressed them. After profound reflection he decided not to cast away the last hope of maintaining peace. He continued, instead of enclosing a copy of Mr. Seward's note:

After a careful examination of the full instructions with which I have been furnished, in preparation for such an emergency, I deem it inexpedient for me to attempt any recurrence to arguments for effective interposition in the present case. The fatal objection of impotency which paralyzes Her Majesty's Government seems to present an insuperable barrier against all further reasoning. Under these circumstances, I prefer to desist from communicating to your Lordship even such further portions of my existing instructions as are suited to the case, lest I should contribute to aggravate difficulties already far too serious. I therefore content myself with informing your Lordship that I transmit, by the present steamer, a copy of your note for the consideration of my Government, and shall await the more specific directions that will be contained in the reply.<sup>1</sup>

This letter may well be taken as a perfect specimen of the art of applying the maximum diplomatic pressure along the path of minimum resistance. And yet, strangely enough, this diplomatic gem was not needed. For once Mr. Adams' instinct had failed him. He, possibly through anxiety, credited Lord Russell with more tenacity than he had. Mr. Adams already had prevailed. England had surrendered to the note of the third.

<sup>1</sup> *Mr. Adams to Earl Russell, September 5, 1863.*



FOREIGN OFFICE, September 4, 1863.

SIR, — With reference to your letter of yesterday's date with respect to the iron-clad steam rams from Messrs. Lairds' yard at Birkenhead, as well as with reference to previous letters from you on the same subject, I have to inform you that the matter is under the serious and anxious consideration of Her Majesty's Government.

I beg you to accept the assurances of the highest consideration with which I have the honour to be, Sir, your most obedient servant,

RUSSELL.

Charles F. Adams, Esq., &c., &c., &c.

Further than this Earl Russell, for the moment, could not go, for he did not know whether the Cabinet would sustain him. He had acted on his own responsibility against the advice to the Crown Counsel, and he could only appeal to Lord Palmerston to stand by him. On September 3, the day on which he received the letter which appears to have determined him, he wrote confidentially to the Prime Minister:

MY DEAR PALMERSTON, — The conduct of the gentlemen who have contracted for the two iron-clads at Birkenhead is so very suspicious that I have thought it necessary to direct that they should be detained. The Solicitor General [Sir Roundell Palmer] has been consulted, and concurs in the measure as one of policy though not of strict law. . . . If you do not approve, pray appoint a Cabinet for Tuesday or Wednesday next.<sup>1</sup>

Mr. Adams sent his despatch of September 5 somewhat early. Just before three o'clock in the afternoon he received the note containing Lord Russell's capitulation, and he immediately took himself to task for what he condemned as an error of judgment. "I need not say," he told Mr. Seward, "that had I known of the later course of the Government in season, I should have held it [his declaration of war] back. Feeling as I do the heavy responsibility that must devolve upon me in the conduct of this critical transaction, it is not my disposition to say or do the least thing that may add to the difficulties . . . between the countries."<sup>2</sup> And yet had Mr. Adams from the beginning been able to read the inmost mind of all the members of the British Cabinet, though he might have postponed a blunt presentation of the alternative, and though he might have

<sup>1</sup> Walpole, *Life of Lord John Russell*, II. 359*n*.

<sup>2</sup> *Adams to Seward*, September 8, 1863.

softened it somewhat in language, he could not have changed its substance. The fact had become patent, and sooner or later the fact had to be clothed in some form of words. The pass had come when nothing short of impending war would bridle the English aristocracy. Lord Palmerston, indeed, had to uphold Lord Russell, else Lord Russell would have resigned and the Cabinet would have fallen, but Lord Palmerston could not defend and never did defend his colleague without stultifying himself. The Crown Counsel declined to stretch the Foreign Enlistment Act to cover the case of the rams, but Palmerston, as Prime Minister, had in Parliament refused to amend the statute because it sufficed, and this notwithstanding an avowal by Earl Russell, which he must have known, that the escape of the *Alabama* was a scandal. On consideration Lord Palmerston could think of nothing better to do than to buy the rams for the navy. But Bravay, when asked, would not sell. Such conditions could not long continue without the fall of the ministry or the release of the ships. The position was not tenable. And Earl Russell in reply to Mr. Adams, feeling what he risked and how he was beset, told him with bitterness that he did not appreciate what had been done for him. The Earl began by observing that he had read "your letter of the 5th instant . . . with great regret." He insisted that the Cabinet had taken every step to enforce the law which was "within their competency," and that they would, "from a due regard to their own good faith, and to the national dignity, continue . . . to pursue the same course." He concluded by hoping "that the Government at Washington may take a calmer and more dispassionate view of these matters than seems to be inferred from your note."<sup>1</sup> Earl Russell could have made no such mild reply as this had he been in possession of Mr. Seward's despatch, no matter what the consequences might have been to himself or to England.

Whatever might have been Earl Russell's anxieties and troubles, and however strong the Cabinet's wish "faithfully to perform" their duty, Mr. Adams too well knew their weakness to relax for an instant his grasp. On the contrary, after the seizure of the rams his tone rose from one of stern remonstrance to one of sterner menace. Come what might, so long as he stayed in England, those rams should never sail.

<sup>1</sup> *Earl Russell to Mr. Adams, September 11, 1863.*



In his letter of September 11 Earl Russell had only promised that the rams should be held "until satisfactory evidence can be given as to their destination, or, at all events, until the inquiries which are now being prosecuted . . . shall have been brought to a conclusion." To this my father rejoined that if Lord Russell felt impelled to tell him that he had read the letter of September 5 with "great regret," it could not "exceed the regret with which I wrote it."

I trust I may be pardoned if I was somewhat moved on perceiving that the peace of two great countries, and the lives of perhaps thousands of the people inhabiting them, were about to be seriously endangered, . . . by reason of the want of a scruple of technical evidence to prove a gross and flagrant fraud. With regard to the opinion of Her Majesty's Customs Agent at Liverpool, I had already had abundant cause to know the value of that in various . . . remonstrances against the notorious proceedings at that port. If Her Majesty's Ministers look no further for proof to invalidate the evidence which I have had the honor to present, I can readily foresee what will be the issue. . . . I may be pardoned if I here remind your Lordship of the significant language used in a parallel case in former days by that distinguished British statesman George Canning, when he deprecated the consequence of "permitting the paltry, pettifogging way of fitting out ships in British harbors" to "sneak his country into a war."

If then, there be any virtue in the authority upon which Her Majesty's Government deliberately decided that the provisions of the Foreign Enlistment Act could be enforced, without . . . amendment, this is surely a most fitting and urgent occasion. . . . I have reason to believe that no efforts are intermitted to prepare the war vessels for immediate departure. . . . I shall be little surprised at learning . . . of . . . any . . . expedient, however audacious . . . which may have for its object the possession of these formidable ships.<sup>1</sup>

Since Trafalgar no British minister had endured such language, and Lord John Russell could not endure it in silence and yet hope to keep his authority in Parliament. As it was, this haughty aristocrat was soon to hear himself accused of cringing before a foreign power. So when Lord John came to answer imputations against the honesty of his subordinates and reflections on his own common sense, he launched into

<sup>1</sup> *Mr. Adams to Earl Russell*, September 16, 1863.

vaunts which he knew to be untrue, and, what was worse, which he knew might before long become the jest of Europe, by being published, if not at home, at least in America.

There are, however, passages in your letter of the 16th, as well as in some of your former ones, which so plainly and repeatedly imply an intimation of hostile proceeding toward Great Britain on the part of the Government of the United States, unless steps are taken by Her Majesty's Government which the law does not authorize, or unless the law which you consider as insufficient is altered, that I deem it incumbent upon me, in behalf of Her Majesty's Government, frankly to state to you that Her Majesty's Government will not be induced by any such consideration, either to overstep the limits of the law or to propose to Parliament any new law which they may not, for reasons of their own, think proper to be adopted. They will not shrink from any consequences of such a decision.<sup>1</sup>

The very day after he had pledged his word that nothing could induce the ministry to which he belonged "to overstep the limits of the law," he received notice from the American legation that a strong detachment of the crew of the *Florida* had reached Liverpool, consigned from Brest, by a commander in the Confederate navy, to Captain Bulloch, who had built the *Alabama*, and who was then building the rams. Such a violation of neutrality, Mr. Adams was very sure, "if committed by any agent of the United States, would be likely to attract the immediate notice of Her Majesty's Government," but this was incidental. The coming to England of this force indicated a design to seize these ships and take them to sea by violence.<sup>2</sup>

Hitherto Liverpool had been solidly for the South. Now it split into factions. The officials of the Custom House were more convinced than ever that the Lairds were spotless, and that, even if they were building battle-ships for the Confederates, they might be implicitly trusted to notify the Government in season, of the day and hour on which they were to sail. So high did the reputation of the Lairds for truth and veracity stand among this gentry. The naval officers, on their side, were equally convinced that there was grave danger of an

<sup>1</sup> *Earl Russell to Mr. Adams*, September 25, 1863.

<sup>2</sup> *Mr. Adams to Earl Russell*, September 24, 1863 (received September 26).



outbreak, and there can be little doubt that some attempt at a rescue would have been made, had not the guarding of the rams been assigned to Captain Inglefield of the *Majestic*. For once the Ministry employed, in the enforcement of their neutrality, an energetic, competent and honest agent. Captain Inglefield did not rest until he had opened the docks, towed the battle-ships into the river, and anchored them under the guns of his frigate, with a strong guard on board.

Only a consecutive perusal of the correspondence of those months can make us realize how high passions ran. On September 24 Sir Roundell Palmer became Attorney-General, and the tone of the Law Officers of the Crown sank lower than ever. Conversely affairs in Liverpool waxed warlike. Captain Inglefield made all his preparations for boarding the ram called *El Mounassir* in force, should the Lairds try to run her out on some foggy night. On October 25 he wrote confidentially to the Admiralty, that the ill-feeling among the Laird hands was so great that he had obtained one of the fastest steamers on the river, because, when it came to towing the ram from the dock, "one back-turn of the tug's wheels might send our pinnacle and crew to the bottom (should it be found necessary to board), . . . [therefore] I determined to send a fast steamer which would be quite a match for the tug-boat, and could act, in case of necessity, to take forcible possession. . . . I proposed . . . (on receipt of a preconcerted signal) to embark sixty armed men at a few minutes' notice, and so to put myself speedily in a position to support the . . . Custom House officers."<sup>1</sup> To the Custom House the Lairds continued to be to the end as innocent as lambs. On October 14, long after the crew of the *Florida* had arrived, the Collector wrote to the Commissioners of Customs that, because of the presence of these men, "It appears that apprehensions are entertained that forcible possession may be taken of these ships, and that they may be carried away by Confederate agency; I have therefore instituted careful inquiry . . . and the result of such inquiry is, . . . that there is not the slightest foundation for supposing that any such intention exists."<sup>2</sup>

<sup>1</sup> *Captain Inglefield to Vice-Admiral Sir F. Grey*, October 25, 1863. Appendix to the *Case presented on the part of the Government of Her Britannic Majesty* (at Geneva), II. 417.

<sup>2</sup> *Edwards to the Commissioners of Customs*, October 14, 1863. *Ib.* II. 401.

On October 29 Mr. Adams pointed out to Mr. Seward that, while he had confidence in Captain Inglefield, it was remarkable "that any such question as the defiance of the Government in a leading British port should be supposed possible," and commented on the fact that though Mr. Laird, member for Birkenhead, was said to be a timid man, he had dared, in a speech at Liverpool, "to threaten the Government itself, if they attempt to interpose their power to prevent his evading the law of the land, even though thereby it should hazard the peace of the country."

By the middle of October every one whom Bravay had originally mentioned as being builders of the rams had repudiated him. No one would even consider them as a possible purchase except the Sultan of Turkey, who recently had intimated that, if such ships were really for sale he might like to see the plans. He was, however, not dealing through the Viceroy, and was committed to absolutely nothing. On October 16 Earl Russell received this telegram from Mr. Colquhoun: "The Viceroy denies emphatically that he has in any manner engaged to induce the Porte to purchase the iron vessels. He declares that the subject was never mentioned between himself and M. Bravay, and that the latter is perfectly at liberty to do what he pleases with them. His Highness from the first refused to recognize any of Bravay's contracts." All this time the Lairds clamored for their ships louder and louder, and Lord Russell applied to the Law Officers to know how to justify the seizure. From the beginning Sir Roundell had been of the mind that the seizure could not be justified under the law, yet the seizure had been made, and he could only tell Lord Russell that he must inform the Lairds that he had acted "under the authority of the provisions of the Foreign Enlistment Act." But still Sir Roundell was as timid as any hunted hare. The main question, after all, said he, is "whether M. Bravay in fitting them [the rams] out at Liverpool had a fixed intention that they should be employed in the Confederate service." This question, he continued, depending largely "upon moral and circumstantial evidence, makes it important to exclude, if possible, the supposition" that "M. Bravay may really have contemplated a sale of these vessels to the Turkish through the Egyptian Government . . . with respect to which our present information



is not satisfactory.”<sup>1</sup> Sir Roundell’s opinion was actually given five days after Mr. Colquhoun’s telegram. It would not be easy in all the long roll of opinions of attorney-generals to find one more craven.

So the autumn wore away, and as winter came on Lord Russell meditated on facing Parliament with these rams on his hands, and Sir Roundell on meeting the Court of Exchequer without a bill of exceptions signed by the Chief Baron. Sir Roundell knew that Sir Frederick would do him and the Ministry all the harm he could, and Sir Roundell was not the man to coerce a domineering judge. His predicament was almost as unpleasant as Earl Russell’s, while he had a thinner skin and far less courage. So when it came to the test between these men Sir Frederick routed Sir Roundell and precipitated chaos. On this subject Sir Roundell was always somewhat sore, and he subsequently, in his *Memorials*, published his version of what happened. His tale begins with the jury trial. I give it in his own words somewhat condensed.<sup>2</sup>

The Lord Chief Baron, after summing up the evidence, put before the jury the question of law on which it was his duty to direct them. The Chief Baron, having stated that the word “equip” in the statute meant “arm,” went on to say:

It seems to me that, if the *Alabama* sailed from Liverpool without any arms at all, as a mere ship in ballast, so that her armament was put on board at Terceira, which is not in Her Majesty’s dominions, then the Foreign Enlistment Act was not violated at all. The question is, was there any intention, in the port of Liverpool or any other port, that the ship should be (in the language of the Act of Parliament) equipped, fitted out, or armed, with the object of taking part in any contest? If you think that the object was to equip, furnish, fit out, or arm that vessel at Liverpool, then there is sufficient matter for your consideration. But if you think the object really was to build a vessel in obedience to orders and in compliance with a contract, leaving it to those who bought it to make what use they thought fit of it, then it appears to me that the Foreign Enlistment Act has not in any degree been broken.

On the one hand it was admitted that the ship had been built as a ship of war for the Confederate States; on the other hand

<sup>1</sup> *The Law Officers of the Crown to Earl Russell*, October 19 and 21, 1863.

<sup>2</sup> Earl of Selborne, *Memorials, Family and Personal*, II. 442 *et seq.*

there was nothing to show that she had been armed, or that there had been an intention to arm her, within British jurisdiction. On this evidence and with these directions the jury

had no choice but to return a verdict against the Crown, acquitting the ship, which they did. We desired to bring the question of law . . . before the House of Lords. This could only be done at that time in one way, by what was called a "Bill of Exceptions" to the ruling of the Judge; which it was necessary to tender immediately. . . . This we proposed to do, and wrote out and would have handed in our exceptions, but for the interposition of the Judge; who said, "I will accept any Bill of Exceptions you choose to tender." The proceeding was technical; . . . and it was usual, in cases of importance, to allow time for drawing it up. When, therefore, the Lord Chief Baron intimated that we were not to be bound by what had been prepared at the moment, . . . we left the court well satisfied with that understanding. . . . That any difference could arise as to what the direction given to the jury was, did not occur to any of us as possible; we had the words before us, which seemed unambiguous. If the Lord Chief Baron were not satisfied with our way of putting it, it could be put in his own words, or in any other way (the substance being the same) which he might consider more accurate. Our surprise, therefore, was great, when, after a long correspondence with Sir William Atherton during the vacation, his Lordship disclaimed the ruling, . . . and refused to sign any Bill of Exceptions at all. In vain did Sir William Atherton press upon him the words which he had used, and especially what he said about the *Alabama*. He replied that "the *Alabama* had no more to do with the matter than Noah's Ark."

So stood the case, when Sir William Atherton was compelled, by the illness of which he died early in the following year, to retire from office. I succeeded him as Attorney-General on the 24th of September; my own place being taken by Collier.

When the Courts met at the beginning of Michaelmas Term, my first official duty was to move for an enlargement of the time within which the Bill of Exceptions, in the *Alexandra* case, might be signed. I said I had no reason to believe that, on that subject, there would be any difference between our opponents and ourselves; and that I could not relinquish the hope that the Lord Chief Baron might still agree to what was necessary, in order to obtain such a determination of the real question as might be satisfactory to all parties, and useful to the public. But the Lord Chief Baron interposed; "he saw no prospect whatever of any change in the view which he had taken in his correspondence with Sir William Ather-



ton." He denied that he had told the jury the ship must be armed in order to come within the Act, and said he had left the matter at large to them. When I stated my conviction that the jury had been guided by what they understood to be his interpretation of the Statute, he answered, — "Nothing of the kind." His colleagues upon the Bench did not seem to like the situation; and, in their anxiety to find a way of escape from it, they suggested that they had power, by making new Rules of Court, to give a right of Appeal in Crown suits, . . . and intimated that they were prepared to make use of that power. . . . To this the Lord Chief Baron was willing to agree. He was more than eighty years old, having presided over the Court of Exchequer for nineteen years, with general respect. To press any further a public controversy with him, of which the character must have become personal, would have been painful and unseemly; and, under these circumstances, the only thing possible was to give up the Bill of Exceptions which he refused to sign, and to move for a new trial, hoping to have a right of Appeal under the new Rules, which were accordingly made.

I obtained a Rule *nisi* for a new trial; and, on the motion that it should be made absolute, an elaborate argument took place. It was then admitted that the question did depend entirely upon the point of law which we had desired to raise by our Bill of Exceptions. Judgment was given on the 11th of January, 1864, when the Court was equally divided. The Lord Chief Baron took the same view of the law which we had understood him to lay down to the jury at the trial, and Baron Bramwell agreed with him. The other two judges, Barons Channel and Pigott, dissented, adopting the construction of the Statute upon which the Crown relied. As a necessary consequence of that equal division of opinion, the motion for a new trial was refused. In vain did we appeal to the Exchequer Chamber, and from the Exchequer Chamber to the House of Lords. In both it was held, by a majority of voices (though in both there were great judges who differed from the majority), that the Court of Exchequer had no power to make the new Rules giving us a right to appeal. The consequence was that the *Alexandra* was released, and passed into the service of the Confederate States. The question of law was left undetermined (I should rather say) in greater uncertainty than before.<sup>1</sup>

When Sir Roundell wrote his *Memorials*, toward the close of his life, he very naturally wished to make a good case for him-

<sup>1</sup> Sir Roundell Palmer was not absolutely exact in his report of the instructions given by Pollock, C. B. See p. 284, *supra*.

self, but the best is poor. He seems to have been afraid both of Lord Westbury and of the Chief Baron, who, though nearly eighty-one, had no scruples and a bitter tongue. Sir Roundell could only have appeared well had he shown courage and singleness of purpose. First he had to deal with the law. The decision in the *Santissima Trinidad* stood in his way, as it subsequently stood in the way of the United States at Geneva. Mr. Bancroft Davis, who represented the United States at Geneva, treated it properly. Standing alone, said he, the *Santissima Trinidad* is "at variance with common sense, and with the whole current of the action of nations." If it must be taken alone, he should ask the Tribunal to disregard it. Happily, he argued, there is no necessity to take it alone, since, at the same term, and on the next day, it was so explained and limited by Chief Justice Marshall, in the *Gran Para*,<sup>1</sup> that the two cases can be read together, forming, as it were, but one.<sup>2</sup> Any errors made by Justice Story on March 12, 1822, were corrected by the head of the Court on March 13.

Had Sir William Atherton lived, some such argument might have been made, for Sir William was a stiffer man than Sir Roundell, and at the jury trial resolutely refused to commit himself. Afterward I came to know Sir Roundell rather well, considering the difference in our age and rank. He was a very agreeable man, but not famous either for ingenuousness or pugnacity, especially when on the weaker side. Here he found himself in a dilemma. Lord Westbury was committed to the doctrine of *animus*. Sir Roundell did not wish to run counter to Lord Westbury, therefore he conceded the soundness of the *Santissima Trinidad*. He did not insist that the meaning of a statute on which hung peace and war could not be juggled with. He himself was always only too ready to split straws. He split straws here. He denied any international obligation to enforce municipal law. Nor did he dare, when Sir Frederick repudiated his promise to allow the Government's exceptions, and brazenly sneered at his own written words, to take the old man by the throat. He should, if he had been in earnest, have thrown up the case and reported the falsehood of the judge to Parliament for the legislature to deal with, as with an inter-

<sup>1</sup> 7 Wheaton, 471.

<sup>2</sup> *Case of the United States* (at Geneva), 198, 202.



national breach of faith. Nothing of all this did he even attempt. He tamely argued his cause on the basis of the *Santissima Trinidad*, thus laying himself and the Cabinet open to an outrage from Sir Frederick which was remembered and quoted both in and out of Parliament for years to come.

The result of the argument on the part of the Crown seems to be this (said Sir Frederick), A shipbuilder may build a ship altogether of a warlike character, and may arm it completely with the latest and most mischievous invention for the destruction of human beings, and may then sell it to one of two belligerents, with a perfect fitness for immediate cruising, and ready to commit hostilities the instant it is beyond the boundary of neutral territory, provided there was no previous contract or agreement for it. But if there be any contract or agreement for it, it cannot be made to order with the slightest warlike character about it, though this be part of the accustomed and usual trade of this country. . . . The means of evasion which this furnishes is obvious. A signal, a word, a gesture, may convey an order wholly incapable of being proved. It is unnecessary to dwell upon this; it is at once perfectly obvious; and the real difference between a crime and an act of commerce may, in point of evidence, entirely disappear. To use an expression borrowed from one familiar in Westminster Hall about a coach and six, a whole fleet of ships might sail through such an Act of Parliament as this, if this be the meaning of it; and we are to believe that our legislators exhausted all their wisdom in settling the language of the 7th clause, and had none remaining to perceive the enormous loop-hole which they had left.

This thrust by Sir Frederick at Sir Roundell and Lord Westbury is another instance of that social incoherence which paralyzed the aristocracy in its conflict with America. Sir Frederick was a Tory politician, and as a Tory he used this opportunity to discredit a Whig Cabinet and a Whig Chancellor. For Sir Frederick stigmatized, as dishonest, opinions which Lord Westbury was known to entertain, and which he announced from the bench in 1865 in *Ex parte Chavasse*. Nor could the attack on Lord Westbury have been accidental; for Sir Frederick paraphrased the language afterward used by the Chancellor, and this paraphrasing must have been intended for parliamentary effect. It did have a very considerable effect, as the debate a few weeks later proved. Still deep as Pollock may have cut, he cut less deep than did his associate, Baron

Bramwell, who was the only one of Pollock's three associates who sustained him. Baron Bramwell was a better lawyer than Sir Frederick, and his opinion carried more weight. He said, in substance, that setting aside all personal opinions as to the better policy to pursue in the enforcement of neutrality, he, as a judge, had only to consider the meaning of the statute, and he thought that the statute intended to render penal only the sending forth of an armed ship to participate in war. "I am aware of the consequences if this is the law. A ship may sail from a port ready to receive a warlike equipment, that equipment may leave in another vessel, and be transferred to her as soon as the neutral limit is passed, . . . and thus the spirit of international law may be violated, and the letter and spirit of the municipal Act evaded. But as the law stands, . . . I see no remedy. . . . I am aware, of course, that it would be easy to . . . make a law prohibiting the sending forth of [such] a ship. . . . Whether such a law would be desirable I do not presume to suggest." Baron Bramwell was right, it was not the function of the judges but of the Cabinet to decide "whether such a law would be desirable," and if the Cabinet honestly wished England to do her duty as a neutral, and were advised by their counsel, as they had been, that the statute was imperfect, nothing could be plainer than that an amendment "was desirable." Why Lord Palmerston and Lord Russell so obstinately declined to ask Parliament for additional legislation they never could, or at least they never would, satisfactorily explain. The only convincing explanation would have been that, as honest men themselves, they had not supposed that English judges could have resorted to flagrant equivocation to compass a political end, especially when that end involved a repudiation of solemn engagements with the Crown. But if this were their reason they could hardly have given it, in view of the vulnerability of Lord Westbury.

So far as the Chief Baron was concerned, it is not very surprising, considering the manner of man he was, that he should have been willing to go great lengths to prevent his rulings from coming before a higher English tribunal, for the character of those rulings was very shortly and very thoroughly exposed by the Scotch Court of Session.

Many of the brightest ornaments of the British bench and



bar have been Scotchmen, and the Court of Session, to say the least of it, has always stood as high as the Court of Exchequer. The Court of Session in 1864, without hesitation, unanimously swept aside the pettifogging of the Exchequer in a decision which, if it had been made in England in 1863, would have saved the nation from bitter subsequent humiliation.

On December 10, 1863, the Collector of Customs at Glasgow seized the ship *Pampero*, as the *Alexandra* had been seized, for violation of the Foreign Enlistment Act, and the Lord Advocate filed an information in which he did not allege an armament because he could not do so. On May 5, 1864, the case came up on a preliminary objection made by the claimants to the competency of evidence to prove an "equipment" in contravention of the statute, when the evidence fell short of proving an armament. Lord Ardmillan held that, "The actual arming . . . or intention to arm . . . is not necessary to the constitution of this offence. Any operation whatever in the way of equipment, tending to the fulfilment of the statutory intent," is an offence under the Act.<sup>1</sup>

After this ruling the claimants agreed that judgment should be entered for the Crown, and the building of a Confederate navy on the Clyde ended.

Occasionally, as Mr. Gladstone said of himself, even the wisest men behave as if distraught. Mr. Seward was, unquestionably, one of the ablest ministers of Foreign Affairs which our country has produced, and yet Mr. Seward in the winter of 1863 perpetrated an act of such astounding recklessness that, as I look back upon it, I am aghast. No one in America knew so well as Seward the extreme tension in England in December, 1863; no one knew so well the pressure on Lord Russell, or the precarious tenure of power of the Cabinet. No one could appreciate, as he could appreciate, the disaster it would be to the United States should the Palmerston administration be defeated in the Commons on the issue of the seizure of the rams. And yet Mr. Seward in December, 1863, sent to Congress, appended to the President's message, not only the whole correspondence touching the rams, which he knew Earl Russell was sedulously reserving, but even those instructions of July 11 which Mr. Adams had thought so compro-

<sup>1</sup> Lord Advocate v. Flemming, 2 Cases in the Court of Session, 3d Series, 1060.

mising that he risked his reputation and his political life rather than present.

The shock in England was prodigious, coming, as it did, on the heels of the *Alexandra* scandal, and immediately before the meeting of Parliament. Mr. Seward had said bluntly what Mr. Adams had said discreetly, that England had no law for the protection of countries with whom she was at peace, therefore those countries must, at whatever risk, protect themselves, and this statement had been proved to be true by the antics of an octogenarian chief justice. As Mr. Adams wrote to Mr. Seward: "The feeling of the profession seems, on the whole, to be one of mortification at this spectacle. . . . The English are indifferent to reproach, but they sensibly feel ridicule. Proudly as they boast of the perfection of their domestic institutions, it is with no little regret that they open their eyes only to perceive so glaring an instance of their defects."<sup>1</sup>

Nor was this all, or the worst. Englishmen now understood for the first time the position into which the Palmerston administration had brought their country. The culmination of English pride and self-complacency is marked by the appearance of Macaulay's History, and may be fixed pretty precisely as the year 1860. That period of elation lasted until the publication in Washington of this diplomatic correspondence. From the wound it then received it never recovered. Go back as far as they would Englishmen had bragged that England had never turned her back upon an enemy. Sometimes she had been defeated, it is true, but she had never been intimidated. Yet in 1864, when they came to read this diplomatic record, they learned how the most distinguished member of the great house of Russell, with his own admission before his eyes that the escape of the *Alabama* was a scandal, and with the whole world ringing with the boasts of the Confederates that with certain English-built ships they would devastate the seacoast of the Northern States, had told the American Minister on September 1 that he could not "interfere in any way with those vessels," out of respect for English law; and how, on the day after this declaration, he had seized those very ships, in defiance of law,

<sup>1</sup> *Adams to Seward*, April 8, 1864. Mr. Adams probably received most of his impressions touching legal opinion from Lord Wensleydale, an intimate friend. Lord Wensleydale dissented when the House of Lords dismissed the *Alexandra* appeal in 1864.



because of an intimation that hostilities must follow upon their escape.

Even so the most damaging revelations had not been disclosed. Mr. Adams himself never knew that on the day Earl Russell assured him that Gladstone's Newcastle speech did not "justify any of the inferences that had been drawn from it, of a disposition in the Government now to adopt a new policy,"<sup>1</sup> Lord Russell and Mr. Gladstone had jointly urged intervention, and that on that day the design had been formed to engage the French Emperor in an attempt to influence the Cabinet, after other means had failed. Nor, more humiliating still, though Englishmen might surmise, they could not yet prove, that Lord Russell held the Laird rams without trial, in the hope of starving the Lairds into making to him a sale, because his Attorney-General did not dare a second time to face Sir Frederick. It was only a year later that Lord Russell told Mr. Adams that Sir Roundell's timidity had driven the Cabinet to adopt the expedient of buying the rams, since he would not trust a jury with Pollock on the bench.

"I," Mr. Adams wrote to Seward on February 16, 1865, "remarked that I had become convinced, from the result of the last trial, that the United States could stand no chance before a jury. His Lordship said that it was in consequence of doubts of the Crown lawyers, in the case of the iron-clads, as to the possible presence of one or two advocates of the Confederates on the jury, that it had been decided to buy them up. People here now took sides, almost as vehemently on our questions, as we did ourselves."<sup>2</sup>

On February 4, the first night of the session, Parliament showed its temper. Lord Derby expressed the hope that Earl Russell had answered, in what Earl Russell afterward described as "becoming terms," Seward's instructions of July 11, touching the destruction of Confederate cruisers in English ports by the American navy. On February 9 Earl Russell, luckily for himself, was able to answer that, when the noble Earl had asked his question, he did not remember any such despatch. "I find since, that it was a despatch written by Mr. Seward to Mr. Adams, but Mr. Adams never thought proper to lay that

<sup>1</sup> *Adams to Seward*, October 24, 1862.

<sup>2</sup> *Adams to Seward*, February 16, 1865.

despatch before me, and therefore I was spared the difficulty and the pain of giving an appropriate answer to it."

Then the Earl of Derby pressed Earl Russell harder. "I presume," said he, "that it has now been laid before the noble Earl, because I see that a reference is made by Mr. Adams" to an answer "to several despatches, among which he includes the despatch of July 11."

*Earl Russell.* "I certainly do not find among the papers the despatch of July 11, and Mr. Adams informed me expressly that he had received that despatch and did not hand it to me. That being so, I should not do so useless a thing as endeavor to get up a wrangle with Mr. Adams on a despatch which was never presented."

All this disturbed Mr. Adams, but not because it injured his own standing, for it improved it. As he told Mr. Seward in a letter he wrote him on February 11: "The effect is to raise my action in the British estimation rather more than it deserves, or I altogether relish;" for he did not "relish" having his reputation raised at the expense of his friends and more especially of his chief. All England saw that the United States had won a magnificent victory, and men paused in their astonishment, not knowing at which to wonder most, the victory itself or the skill of the champion. Lord Derby, who was the head of the Conservative party, may be supposed to have fairly expressed British educated opinion, and Lord Derby, in the debate, went far. "I think Mr. Adams took upon himself a grave responsibility — a very grave one it was — in not presenting it [Mr. Seward's instructions of July 11]; and I think that in so doing he acted as a friend of peace and a friend of the good relations between the two countries. I think it required no small degree of moral courage to take the course he did, and that he did good service to both countries by withholding the despatch. . . . And here I must observe that, in all the communications which it has been his duty to make to the noble Earl, Mr. Adams has acquitted himself with the strictest courtesy, and acted as well, under the circumstances, as it was possible to do." <sup>1</sup>

Then Lord Derby went on to describe the magnitude of the

<sup>1</sup> Hansard, Third Series, CLXXIII. 429, 430. Lord Derby in the debate of February 11, 1864.



American triumph. Having summed up the sequence of the correspondence which culminated in Lord Russell's despatch of September 1, refusing to interfere, of Mr. Adams' despatch of September 3, intimating that the escape of the rams must mean war, but suppressing the July instructions, and of Lord Russell's answer of September 4, stating that the determination not to interfere was under reconsideration, Lord Derby continued:

"I defy anyone, even the least prejudiced, not to infer from it [the volume issued by the State Department] a great triumph to the diplomacy of the United States, and that the British Government had given to intimidation and menace that which they would not yield to a sense of justice."<sup>1</sup>

Mr. Adams was surprised at the effect which the publication of the correspondence in England had upon his personal position. From this time forward he stood quite apart. He commented upon the phenomenon with some wonder in his diary. He could see nothing so very remarkable in a minister, entrusted with a negotiation of supreme importance, taking the responsibility of temporarily withholding a despatch which he thought likely to be injurious, even if by so doing he risked reprimand himself. He knew, he noted, that he had been calm throughout, and undisturbed by doubts touching his duty; and this was how he always impressed me. He had something nearly approaching a perfect poise of mind.

When, however, on reading the debates in Parliament, he perceived that Lord Derby and the opposition generally were inclined to use him as foil by which to discredit both Mr. Seward and Earl Russell, he determined to set himself right. He wrote to Mr. Seward that nothing could be "more unsafe to a diplomatic agent than an approach to a false position between two Governments;" and he then pointed out, as gently as he could, how narrow the margin had been between success and ruin, and how trifling an error might still work disaster:

"The publication of the diplomatic papers annexed to the President's message has elicited much comment in Parliament and in the newspapers, upon your instructions to me, . . . particularly that portion of them which declared the

<sup>1</sup> Hansard, Third Series, 'CLXXIII. 432.

intention of the Government, under certain contingencies, to enter English ports and seize obnoxious vessels."

He then explained that he had not intended to suppress those instructions altogether, but to reserve them as a last resource, when the British should have made their final answer declining to stop the rams.

But when that moment arrived, which was on the reception of Lord Russell's note of the 1st of September, I felt so fearful that the declaration of that intention would close all further possibility of preserving the peace between the two countries, that I preferred to take the other course indicated in my reply of the 5th, which was, while intimating the strong character of my instructions, to propose to await new ones adapted to the precise emergency rather than to declare them. As matters actually turned, this proceeding seems to have been fortunate; for while the general statement in my note left on this Government the impression that war might be the alternative in contemplation, the language took no such specific shape as to compel it to resent it as a threat.<sup>1</sup>

It is only justice to both Mr. Seward and Lord Russell to say that neither bore malice for anything that had occurred. Lord Russell was as cordial to my father as ever, and Mr. Seward behaved in the handsomest manner. When he understood that "British statesmen whose opinions the President would be the last to undervalue, have declared that in their judgment portions of that communication are disrespectful and menacing toward Her Majesty's Government," he instructed Mr. Adams to refer the paper "to Earl Russell's own criticism, with the request that whatever expressions contained in it he shall consider exceptionable be deemed to be hereby withdrawn." He added expressions of regret that any words had been used which might be taken as matter of offence.<sup>2</sup>

This atonement for an indiscretion did not, however, reach London until long after the moment had passed which Mr. Adams had anticipated as being likely to determine the fate of the ministry. The crisis came in the House of Commons, nominally on a motion for the communication of this correspondence to Parliament, but the debate took such a form that

<sup>1</sup> *Adams to Seward*, February 11, 1864.

<sup>2</sup> *Seward to Adams*, March 2, 1864.



the division was tantamount to a vote on a motion to censure. If it had been carried, the ministry must have resigned.

As presented to Great Britain the matter in dispute had now risen to a level above ordinary party differences. A question was to be settled which touched the very foundation of English society, as English society was then organized, and the emotion was correspondingly profound. The aristocracy had broken down in a policy of aggression, and now the ministers who represented that aristocracy appealed to the exponents of democracy, like Bright, Cobden, and Forster, for support. They carried the House, but only by defections from the ranks of those who normally should have voted to remove them and fill their places with more resolute men. How the handful of men who turned the scale would have voted had Seward's instructions of July 11 been delivered, can only be conjectured.

On the night of February 23, 1864, Mr. Seymour Fitzgerald,<sup>1</sup> member for Horsham, moved for copies of all the papers relating to the Laird rams which were in the possession of the Government, and thereupon a debate arose which lawyers of the last generation long remembered both for its ability and its acrimony. Mr. Fitzgerald asked how it came that Earl Russell, having declined to interfere with the rams for lack of evidence down to September 3, 1863, stopped them on September 4, with nothing new against them save one or two depositions, described by Mr. Adams as "of no great additional weight."

What passed to lead to this sudden change of opinion on the part of the noble Earl? That has been answered by a despatch from Mr. Adams himself [to Mr. Seward] . . . dated September 8, 1863. It states that — "At the last moment on Saturday, I sent a despatch [from Earl Russell] . . . just then put into my hands, signifying that the decision of the Government announced in his previous note of the 1st instant had, under the effect of my notes on the 3d instant, been subjected to *reconsideration*." There, Sir, is the secret of the whole matter. The real truth is, that, while using language milder than that of the officials at Washington, Mr. Adams had yet used language so forcible as almost to be menacing, and in his despatch of the 3d September, couched in the most temperate lan-

<sup>1</sup> William Robert Seymour Vesey (1818-1885), son of William, second baron Fitzgerald, Under Secretary of State for Foreign Affairs under Lord Derby, 1858-1859; governor of Bombay, 1866. The debate is reported in Hansard, Third Series, CLXXIII. 955-1021.

guage, the American minister pointed out distinctly that the event of the rams leaving the Mersey and inflicting injury on American commerce would infallibly lead to a war between this country and the United States. (Hear, hear, from ministerial benches.) I scarcely know what honorable gentlemen are cheering at when the statement I make is this, that the Government, without having any legal authority, and having stated that they had no legal authority to stop these rams, yet under the pressure of a menace held out that war would ensue if they did not stop them, proceeded to take that course. (Mr. Dunlap: Hear, hear.) Is that the statement which the honourable member cheers? Is it that we should have a Government who, having themselves announced that they had no legal authority for the act, yet in spite of the law seized the property of a British subject, because they were told by the representative of another power, that if they did not do so consequences would be serious? . . . I can say, with truth, that there is no man who would more deprecate any difference or hostility between this country and the United States than myself. . . . But if I am to be told that the English Government, in order to avoid such a war, is to transgress the law and seize the property of a British subject without any justification, then I say that I will never approve the conduct of a minister who would take such a course; but, on the contrary, am prepared to accept any consequences [rather] than pursue such a line of policy.

It fell, of course, to Sir Roundell Palmer, the legal adviser of the ministry, to answer Mr. Fitzgerald, and Sir Roundell's speech was exceedingly characteristic, and might be called amusingly disingenuous. At least Sir Hugh Cairns thought it so. Sir Roundell first protested that it was unheard of to ask a Government to print its evidence in advance of a prosecution, although in truth it had no evidence against the Lairds, better or stronger than that contained in Mr. Adams' despatches, and the depositions annexed. He then went on to repel the accusation that the Government had yielded to menace, as Lord Derby had charged.

On the whole, (said Sir Roundell,) it did not appear to the Government proper then [prior to September 1] to treat the vessels as liable to confiscation. That decision was announced to Mr. Adams on the 1st of September. It is said, however, that Mr. Adams, on the 3d of September, repeated his instances, and that on the 4th an order was given to detain these vessels, or to prevent them from



leaving the port of Liverpool. That order, however, was not the result of a decision adopted by the Government after the receipt of Mr. Adams' letter of the 3d of September, but, as stated in another place, of a decision arrived at previously. The Honorable Gentleman asks whether any new information reached Earl Russell in the meantime. That is just the one thing contained in the papers . . . which we do not mean to tell him, but he may be sure that the Government had grounds for what they did.

As everybody knows now, on September 4, Earl Russell had nothing before him save the note of September 3, which had not been before him when he sent his note of September 1, nor anything of material importance which had not been before Sir Roundell when he gave his opinion of August 22, on which Earl Russell's note of September 1 was founded. What had happened was that by September 3 the pressure on Earl Russell had reached the point at which he was, as it were, thrust forward, and, ignoring Sir Roundell, seized the rams regardless of law. Sir Roundell, very naturally, did not care to enter into this; so, sliding over details, he advanced to the seizure, which he candidly admitted to be legally indefensible. "The Honorable Gentleman asks what right the Government had to detain the ships (Mr. Seymour Fitzgerald: Hear, hear!) The Honorable Gentleman cries 'hear'; but I do not hesitate to say boldly, and in the face of the country, that the Government, on their own responsibility, detained them."

On the merits of his case Sir Roundell had made fatal admissions, and Sir Hugh Cairns, who was a much stronger lawyer than Sir Roundell, impaled him without mercy on the dilemma he presented:

I find that Earl Russell on the 27th of March last, . . . said that he wished the United States Government to understand that he considered the case of the *Alabama* and the *Oreto* to be a scandal. . . . What did Earl Russell mean by saying that the case of the *Alabama* and the *Oreto* was a scandal? Did he mean that it was a scandal because, having laws to punish such a case, we did not enforce them? The Under Secretary of State shakes his head at this. Well, then, did Earl Russell mean that it was a scandal that we had no laws to punish such cases? He must have meant one of these two things. . . . Now, let us suppose that the noble Lord thought the case of the *Alabama* and the *Oreto* was a scandal because

that, having laws to punish, they were not put in force. Then . . . I want to know this . . . why did not the Government indict the persons who admitted openly that they had sent the *Alabama* out of the country? . . . If the noble Earl meant that it was a scandal because, having laws, those laws were not enforced, I want to know why the Government has not put them into force? . . .

Now let us take the other branch of the dilemma. Did the noble Earl mean that the case was a scandal, because we had not a better law to deal with the cases of the *Alabama* and the *Oreto*? Then, I ask, why have not the Government . . . proposed an alteration of the law? . . . Then, again, we have upon the very same day, a declaration from the noble Lord at the head of the Government. While the noble Earl was sending off his despatch to the Government of the United States, the noble Lord [Palmerston] said in this House, as to any alteration of our law: "I do hope and trust that the people and Government of the United States will believe that we are doing our best in every case to execute that law; but they must not imagine that any cry which may be raised will induce us to come down to this House with a proposal to alter the law. We have had — I have had — some experience of what any attempt of that sort may be expected to lead to, and I think there are several gentlemen sitting on this bench who would not be disposed, if I were so inclined myself, to concur in any such proposition." . . .

We are told that these words of the noble Earl [reproach and scandal] . . . were referred to elsewhere, and the noble Earl was asked to explain them. The noble Earl explained them in this way. He said in substance: "I adhere to the opinion, and my reason is this: How can you describe in any other words an act of Parliament as to which the chief of one of our courts of law has said, 'You might sail a fleet of ships through it'?" . . . Will the House believe it possible that the noble Earl could have fallen into the error I am going to expose? What that very eminent and learned person said was this:

"If I were to adopt the construction which the Crown desires to put upon the Foreign Enlistment Act, which I do not adopt, which I reprobate as false and erroneous, then, indeed, you might not drive a coach and six, but might sail a fleet of ships through the act of Parliament." . . .

We have had another confession from the Government to-night. . . . They send down an officer of the Admiralty to deal with the owners for the sale of their ships. I was quite amused at the manner in which the Attorney-General [Sir Roundell Palmer] dealt with this. He said, "Well, it was a very kind thing, a very humane thing."



. . . I want the Attorney-General to tell me what does he think of dealing with a man around whose neck the Government has got the fangs and talons of the revenue officers. . . . Was that fair dealing? Was that a seller and buyer . . . on an even footing? The Government with its hands upon the ships, . . . saying to the builder, "Come, now, sell us these ships; let us buy them of you." But what is the climax? The climax is this: The month of February comes at last. Parliament meets, and the information can no longer be delayed. It must be filed, and then we have the last letter from the Treasury to Messrs. Laird, which I hope the House will have printed for its perusal in the papers about to be produced. . . .

(*Immediate*)

TREASURY CHAMBERS, February 8, 1864.

GENTLEMEN, — In reply to your letter of the 3rd instant, I am commanded . . . to acquaint you that . . . an information in the case of the iron-clads vessels built by you, and now under seizure by Her Majesty's Government, will be filed in a few days, and that it may be necessary to send a commission, abroad for the purpose of collecting evidence.

GEORGE A. HAMILTON.

Messrs. Laird Brothers.

Collecting evidence! The seizure, according to the Government could only be made upon evidence, and four months after the seizure the Government are going to collect evidence abroad. Sir, we have not got many papers from the Government this year, but I trust the House will insist upon the production of these.

Among the bitter speeches of that night, the bitterest was Lord Robert Cecil's, he who afterward became famous as the Marquis of Salisbury.

I should not address the House, said he, if I saw any inclination among the honourable gentlemen opposite to rise, but they will not, as in the refusal of information and the absence of discussion lie perhaps their only means of safety.

The Honourable and Learned Gentleman [Sir Roundell Palmer] spoke of the language of Mr. Adams as only slightly passing the bounds of moderation. Perhaps he might admit that Mr. Adams' own language warranted that description; but Mr. Adams was the representative of a foreign Government, and that Government had used language to which the designation . . . was scarcely applicable. What of Mr. Seward's despatch of the 11th of July? . . . Mr. Seward's language was as follows:

"Can it be an occasion for either surprise or complaint that, if this condition of things is to remain and receive the deliberate sanction

of the British Government, the navy of the United States will receive instructions to pursue these enemies into the ports which thus, in violation of the law of nations and the obligations of neutrality, become harbors for the pirates. The President very distinctly perceives the risks and hazards which a naval conflict thus maintained will bring to . . . the two countries. But . . . if, through the necessary employment of all our means of national defence, such a partial war shall become a general one between the two nations, the President thinks that the responsibility for that painful result will not fall upon the United States."

That was a distinct threat of war. . . . What he wanted to impress on the House was, that throughout these proceedings there had been a threat of war on the part of the United States. The Government had failed to obtain from courts of law and from British juries that application of the law which it desired, and consequently the only course that was open to it . . . was to procure the utmost possible delay. . . . They were threatened by the United States; they knew they were unable to obtain a decision in their favor in the courts of law; after the threats which had been made by the United States they did not dare to come to the House of Commons for an alteration of the law. What were they to do? The only course open to them was to lengthen out the proceedings to the greatest possible extent. . . . But that was not the most important part of the speech of the Honorable and Learned Gentleman. We had had a distinct avowal that the Government had broken the law. The Honorable and Learned Gentleman had acknowledged that, upon their own responsibility, without any authority from the law, they had ventured to stop vessels which had a legal right to leave the country. Now, it seemed to him that it would be an evil day in our history when it was recorded that the Government, under threats of war from a foreign power, . . . had broken through every right which the subject possessed, . . . had seized his property in violation of the law, and that then Parliament had taken no notice whatever of such an illegality. . . . Was there any other period of our history at which such an act would have been permitted? Was there any other period at which it would have been endured that the Government should violate the rights of the subject in deference to a foreign power, and yet that Parliament should take no notice of the matter? . . .

They had been accused of being the "most docile" House of Commons that ever existed, of "sneaking to their places," of allowing ministers to do what they pleased. They should really merit that charge . . . if they quietly received the threats of a foreign power,



if they permitted ministers to use all the delay and procrastination of the law for the purpose of crushing the subject, if they allowed Her Majesty's Government to break the law, and if they suffered them at the same time to avow that they did it on behalf of those who had addressed to them threats of war.

Every one of these charges made by the opposition against Lord Palmerston's administration was not only true, but was admitted to be true, and had they stood alone, they would have ruined any body of public men who had held office in England since the accession of William III. But they did not stand alone; the great question loomed behind, whether the opposition dared to take office on the issue of liberating the rams. That question was put by Mr. Forster, and it was answered in the negative.

Any honourable gentleman who was in the habit of watching the news which came from America would be aware that for months previous to the detention of these rams a fear was expressed in the North, and a hope in the South, that they would issue forth; and that being so, and the Government having reason to believe that the rams were intended for the Confederate Government, they took upon themselves the responsibility of detaining them. . . . Well, then, if the noble Lord or Honourable gentlemen opposite thought that the Government deserved a vote of censure for so doing, let them boldly propose such a vote, and say that they would not have done the same thing. . . . The noble Lord seemed to think lightly of a war with America; but that was not the feeling of the country, nor did he believe it could be the feeling of the opposition generally.

The certainty of war should the rams be allowed to sail — that was all the defence Earl Russell had to allege in answer to some of the gravest accusations which had been made against any minister of the Crown since the Revolution of 1688. In 1861 a series of questions had arisen touching to the quick the national honor and the national good faith. After mature reflection the Palmerston Cabinet, speaking through their official organ, Sir Roundell Palmer, then Solicitor-General, had, on March 27, 1863, expounded their view of the law to Parliament in these words: "The United States Government have no right to complain of the Act in question; the Foreign Enlistment Act is enforced in the way in which the English laws

are usually enforced against English subjects." Afterward the Government had tested the law and, according to Sir Roun-  
dell Palmer, the courts had held it to be lawful for English  
subjects to build and send abroad such vessels as the rams,  
provided they disguised their purpose to sell to a belligerent  
under certain transparent subterfuges. Eminent counsel had  
given the Lairds similar advice, acting on which the Lairds had  
built these rams, apparently lawfully, and when they were  
ready to sail the Government had seized them, without color of  
law, and had held them by military force, without a trial, and  
without even specifying grounds of complaint.

"I suppose," said Sir Hugh Cairns, "I am not going too  
far in saying that if any but a large and well-established house  
with great resources had been subjected to an occurrence of  
this kind, it must have occasioned its ruin." And the seizure  
had not been made with the honest purpose of bringing those  
ships to trial, that was implicitly admitted, but with the pur-  
pose of forcing the owners into selling their property because  
they could not hold it until their title could be determined  
by a court. "Surely," said Sir Hugh, "in a case of this sort, . . .  
where the property was of the value of nearly a quarter of a  
million of money, . . . surely it was the duty of the Govern-  
ment, . . . to use promptitude and despatch to bring the case  
to trial. Well, now, will the House believe it, that from the  
9th day of October until the 8th day of February, which is  
exactly four months, not a single step was taken, no information  
was filed in the Exchequer; and I do not think I am going  
too far when I say that if this House had not assembled a very  
few days before that time [February 4], the information would  
not have been filed to this day?"

Upon such premises it was impossible to refute Sir Hugh's  
conclusion. "The seizure of these vessels, . . . raises consti-  
tutional questions of as great importance — I say so deliber-  
ately — as were ever brought before this House. I speak with  
full consciousness of the gravity of the expressions I use, when  
I charge the Government — let there be no mistake — I  
charge the Government with having done, and after hearing  
the Attorney-General to-night, I say having done, on their  
own confession, what was illegal and unconstitutional, without  
law, without justification, and without excuse."



Thomas Baring was the most eminent of the Conservatives who voted against their party. Probably there were not half a dozen men on that side of the House who exceeded him in influence. Born in 1799, he had sat in Parliament since 1835, continuously, except between the years 1837 and 1844. He had been offered the Chancellorship of the Exchequer in Lord Derby's administrations of 1852 and 1858, and was beside not only the head of one of the first banking houses in the world, but was one of the most prominent men socially in London. He, for all intents and purposes, closed the debate in these words: "This I would say in conclusion, that if the speeches of my Right Honorable friend and the Honorable and learned member for Belfast [Sir Hugh Cairns] are to be taken as furnishing the grounds on which we are to divide tonight, they seem to me to have arrived, by simply moving for these papers, at a most lame and impotent conclusion. Why do not they at once move a vote of censure on the Government, or on the Law Officers of the Crown for the course which they have pursued? For my own part, I offer to the noble Lord, the Foreign Secretary, and to those Gentlemen by whom he is advised in those matters, although I think they are open to grave censure for not having prevented the departure of the *Alabama*, my thanks for their conduct on this occasion." With that speech the motion died. As Mr. Adams said, Thomas Baring had demolished Lord Derby's "castle of cards."

I doubt if an issue involving the stability of their class has ever been presented more lucidly to an aristocracy within a legislative chamber where they controlled, and if, on such an issue coming to a vote, an aristocracy ever before so quietly and so, apparently, voluntarily abdicated. Sometimes there has been an appeal, as, in the case of the Reform Bill, to an election, but more frequently to arms.

When the American Civil War broke out in 1861, the British aristocracy decided to sever the American Union to strengthen themselves. As the conflict deepened, they perceived that to sever the Union the blockade of the South by the North must be raised. Not daring to raise the blockade with the British navy, because of fear of British democracy, the aristocracy undertook to build and deliver a navy to the South. They built the ships, but, when it came to delivering them, they

flinched before the North, even though to effect a delivery they had prostituted their judges and degraded their courts.

Then the minister who flinched turned upon the subject who was only exercising his rights, as those rights had been defined by the judges to whom the aristocracy had appealed, and took from him his property by military force. The aristocracy had to determine whether they would remove that minister who had betrayed them, and substitute another to carry out their policy to the end, or whether they would capitulate. They voted by a majority of twenty-five to capitulate, and the majority was not partisan.

I take my father to have been the profoundest observer of British society of any foreigner of his time, and from the 4th of February, when he had heard Lord Derby question Lord Russell on the opening night of the session, he had anticipated some such result. Lord Derby, in his opinion, did not rise to the level of the emergency. He was not eager to fight the issue to the end. On February 25 Mr. Adams wrote to tell Mr. Seward, that the opposition had gathered courage enough to worry the Government on its foreign policy, but that it was not ready to take office and reverse it. "It does not appear that they are prepared with any different measures. The struggle looks more like a trial of strength in view of future operations. On this issue the division is not strictly a party one. The majority is greater than the strength of the ministry could command."<sup>1</sup>

And yet the balance hung so even that it seemed that a hair might incline it to either side. The danger was weakness; that war might result from the impotence of the power which temporarily held it in check. Six weeks later Mr. Adams wrote again: I "earnestly hope that our efforts" in the field "may be crowned with success, otherwise it is much to be apprehended that the causes of offence may be accumulated to such an extent on this side as to render escape from a conflict almost impossible. Nothing will keep down the malevolent spirit that pervades the higher classes, but the conviction that there is no hope left of effecting a permanent disruption of the United States."<sup>2</sup>

<sup>1</sup> *Adams to Seward*, February 25, 1864.

<sup>2</sup> *Adams to Seward*, April 4, 1864.



Probably he was right in this forecast, as he usually was right in his forecasts when in England. Lord Palmerston's Government could not have held the rams much longer without trial, and to try them would have involved much risk. Ministers were, even when Mr. Adams wrote, casting about for some means of controlling Pollock, but the chances were not promising that such an Attorney-General as Sir Roundell would succeed in coercing the Chief Baron, especially when sitting with a Liverpool jury. With a verdict against the Crown, the danger would have been acute. The knot was cut, as Mr. Adams thought that it must ultimately be cut, by the collapse of the South. The blockade had done its work. The Confederacy was already financially exhausted, and when Grant and Sherman were beginning their last advance nothing could be spared from home defence for the purpose of sustaining what had become speculative investments abroad. As early as February 14, 1864, the Lairds showed signs of distress. Through Bravay they intimated a willingness to sell for £300,000. This was an attempt to extort money from the Ministry, before the debate. After the debate the price of the rams rapidly fell, and on May 26, 1864, they were finally bought by the Admiralty for £195,000 down and £25,000 more contingent upon their satisfactory completion.

Looked at from the standpoint of American history, purely, the debate in the House of Commons, on February 23, 1864, and the division which closed the debate, are memorable, but they have beside a larger significance. After Waterloo England became the heart of modern civilization, the centre of the world's economic system, and as such she wielded, until February, 1864, a supremacy which was, in substance, unquestioned. On that night she abdicated, and her supremacy has never returned. That act, which indicated a change in the economic and military equilibrium of mankind at large, indicated a still profounder change in the social status at home. The action of the House marked the rise of new social forces, the advent of a new ruling class. The next step was broader enfranchisement, and the formation of a radical Cabinet with Mr. Gladstone at its head. The type of English aristocrat represented by Lord Palmerston had been discarded.

Whatever may have been the failings of this elder type of

man it had never been backward in fight, and if England had won supremacy she had paid for it with her blood. The proof that the species was decaying is that the United States succeeded in swaying England by an apparent readiness for war, when she had, in fact, little or no physical force at command. Nor did this failure of English martial energy manifest itself in relation to America alone.

As on the western continent a consolidated democratic republic appeared to be rising on the ruin of a slave-holding oligarchy, so in central Europe the fragments of Germany showed signs of cohering in what promised to be a threatening military empire. In February, 1864, the Prussians and Austrians began to dismember Denmark by occupying Schleswig. In the dismemberment of Denmark, England had a substantial interest, for the absorption of the duchies would give to Prussia not only a deep-water harbor on the Baltic but the possession of a canal route to the North Sea. This would make it possible for Prussia to become a considerable maritime power; and yet Great Britain's stake in the centralization of Germany was trivial compared to her stake in the American Civil War.

From the outset all Englishmen intuitively perceived that the social equilibrium of English society must be determined by the victory of freedom or of slavery in the West. Power in England hinged on the restriction or the extension of the suffrage. Hitherto, speaking broadly, the landed gentry had predominated, but, if the franchise were to be extended widely, none could tell whither power might migrate. Certainly it would not remain with those who then enjoyed it. Therefore the aristocracy and the proletariat took sides passionately, the aristocracy assuming that if the South should prevail the enfranchisement of the proletariat might be indefinitely postponed, the proletariat accepting it as an axiom that their fortunes were bound up with the fortunes of the North. On February 23, 1864, the aristocracy accepted defeat and formally recorded their surrender. And so rapid had been the progress of their decay that they surrendered to an ultimatum which two years before would certainly have provoked only defiance. They surrendered because their ally, the South, had collapsed. During the American conflict the vitality of the English aristocracy had run to its lees, so that when the Danish difficulty began other social



4 forces predominated; but of this profound movement Lord Palmerston and Lord Russell were only very imperfectly conscious. Mr. Gladstone, on the contrary, had received a powerful stimulant from his experiment at Newcastle. As Lord Palmerston remained reactionary, favoring war and opposing the extension of the suffrage, so, conversely, Mr. Gladstone, as soon as an opportunity offered after the surrender of February 23, 1864, plunged into the gulf on whose brink he had been shivering. On May 11, 1865, he unexpectedly propounded the dogma, in the House of Commons, that every male British subject, of full age, and under no "personal unfitness, had a moral right" to vote. Gladstone pretended to be surprised at the sensation which followed, and ascribed it to a change in his "hearers and in the public mind"; but Lord Morley has likened his words to a "thunderbolt." At all events they agitated the gentry; and Lord Palmerston, who incarnated the spirit of the gentry, wrote to Gladstone that he had offended "all persons who value the maintenance of our institutions."

This speech on the suffrage marked the dividing line between Gladstone the conservative and high churchman, who had represented the University of Oxford, and Gladstone the radical and latitudinarian, who disestablished the Irish Church, advocated "home rule" and who sat for Midlothian. In the first encounter after his conversion, Mr. Gladstone completely routed Lord Palmerston. Almost while Mr. Gladstone was declaring himself a radical in the House, Lord Palmerston, without consulting his colleagues, told Count Apponyi, the Austrian minister, that, should Austria send a fleet to the Baltic, he would order a stronger one thither from England, or resign his office. Very possibly Lord Palmerston may have meant what he said when he threatened to resign, but he loved office too well to make his threat good, when put to the test. When Lord Palmerston presented his proposition to his cabinet, he found Mr. Gladstone in full control. Mr. Gladstone, as a radical, would listen to no suggestion of war, nor, as he said himself, would he "recognize in any way the title of the Prime Minister to bind us" to a policy. Lord Morley has described what occurred at the meeting.

Palmerston and Russell were for war, even though it would be war single-handed. . . . They bemoaned to one another the ti-

midity of their colleagues, and half-mournfully contrasted the convenient ciphers that filled the Cabinets of Pitt and Peel, with the number of able men with independent opinions in their own administration. The Prime Minister, as I have heard from one who was present, held his head down while the talk proceeded, and then at last looking up said in a neutral voice, "I think the Cabinet is against war."<sup>1</sup>

Lord Palmerston saw clearly where all this tended. One day he said to Lord Shaftesbury, "Gladstone will soon have it all his own way; and, whenever he gets my place, we shall have strange doings." And so Lord Palmerston tried to make his seat for the University of Oxford secure, because "he is a dangerous man; keep him in Oxford and he is partially muzzled; but send him elsewhere, and he will run wild."<sup>2</sup>

On June 27, 1865, Lord Russell admitted in the House of Lords that his negotiations had broken down and that Denmark must be abandoned. This avowal was followed by an explosion of shame and indignation at the pusillanimous conduct of England who, having encouraged Denmark to resist, deserted her at the approach of danger. Motions of censure were made in both Houses. That in the Lords was carried by nine votes. In the Commons the debate fell on July 5, and Mr. Adams, who attended the debate, has noted in his diary that Mr. Cobden told him how Lord Palmerston had favored sending the fleet to the last, and had only given way when assured by Mr. Brand, the whipper in, that, on sounding the party, he had found so many members to be convinced that their constituents would not support war, that Palmerston would be badly beaten on a division if he persevered. Although not a voice was raised in defence of Earl Russell, this retreat saved the Ministry for another year, but only because Lord Derby and the Tories were too feeble and too timid to assume responsibility. Therefore Lord Russell continued at the Foreign Office, and he so embroiled Great Britain with the United States, on the issue of the settlement of the *Alabama Claims*, that he nearly succeeded in making arbitration impossible.

The inevitable result followed. On July 6, 1865, Parliament was dissolved, and Mr. Gladstone, who had represented the

<sup>1</sup> Morley, *Life of Gladstone*, II. 117, 118.

<sup>2</sup> Hodder, *Life and Work of the Earl of Shaftesbury*, III. 187, 188.



University of Oxford for eighteen years, was defeated. He found another seat in Lancashire, near his new friends, Bright and Forster. As he told his future constituents, he came among them "unmuzzled"; and perhaps for that reason he was so suspected even there that he stood third on the poll, with two Tories above him. The country returned a House of Commons with a majority of eighty, nominally pledged to support Lord Palmerston, but Lord Palmerston died in October, and even had he lived, he could not have stayed the democratic tide which surged onward after Appomattox. Obeying that mysterious impulsion which often, in moments of emergency, guides a cabinet more truly than it guides a popular assembly, Lord Russell and Mr. Gladstone brought in a moderate Reform Bill, but they were opposed and finally beaten by the gentry, among their party, of the stripe of Lord Palmerston. Plainly, the existing constituencies no longer reflected the energy of the nation. Mr. Robert Lowe, who had held office under Lord Palmerston, led the Whig opposition to reform, and between him and Mr. Gladstone the contest waxed hot. One day Lowe asked a question putting the issue with a bluntness which, though successful in the House, roused resentment among the disfranchised. "If," said he, "you wanted venality, ignorance, drunkenness — if you wanted impulsive, unreflecting, violent people — where do you look for them? Do you go to the top or to the bottom?" Gladstone retorted that there were those who, when they computed an addition to the electorate, regarded it as they might an invading army, but these prospective voters "are our own fellow subjects, . . . our own flesh and blood," men "who have been lauded to the skies for their good conduct." So Gladstone became the popular hero, overtopping even Bright. A few weeks after, during the Reform riots, the mob flocked to his house, shouting for Gladstone and liberty, and the police had to beg Mrs. Gladstone, who happened to be alone, to show herself on the balcony in order to induce the multitude to disperse. At last Mr. Gladstone had fairly hit his mark, and yet Mr. Gladstone with all his popularity could not move an unintimidated Palmerstonian House of Commons. Mr. Robert Lowe, who should have followed him, beat him at every point. According to Mr. Gladstone, Mr. Lowe "supplied the whole brains of the opposition," and "had such a command of the House as

had never in my recollection been surpassed." Finally, on June 26, Lord Russell's Ministry resigned, Lord Derby and the Tories succeeded, and Mr. Lowe, as Lord Morley has said, "believed for the moment that he had really slain the horrid Demogorgon."<sup>1</sup> His exultation was short-lived. When it appeared that Parliament was opposed to enfranchisement, agitation began. On July 22, 1866, the radicals called a meeting in Hyde Park. The Government forbade the meeting, and sent what police they could muster to hold the gates. A vast multitude assembled, threw down the railings, and swept the police aside. No attempt was made to clear the Park, nor, probably, could the Park have been cleared by any military force the Government had at hand. Mr. Adams walked to the Park next day, and was deeply impressed. The grass was brown as if by fire, "and the crowd looking on and enjoying the spectacle were certainly not of the class which ordinarily frequents the region. It was the first growl of reform. The rising for a moment to the surface of that fearful beast which ordinarily lies hidden far down at the bottom. The remarkable part of the spectacle was the order and quiet generally preserved." One growl was enough. Liberals and Conservatives combined to give all that was asked and more, and then, while Mr. Disraeli nominally led the House, Mr. Gladstone and Mr. Bright from the opposition benches dictated to him how he should frame his statute. The aristocracy were thoroughly cowed. Lord Morley has told the story of that session:

The process effecting this wide extension of political power to immense classes hitherto without it, was in every way extraordinary. The great reform was carried by a Parliament elected to support Lord Palmerston, and Lord Palmerston detested reform. It was carried by a Government in a decided minority. It was carried by a minister [Disraeli] and by a leader of opposition [Gladstone], neither of whom was at the time in the full confidence of his party. Finally it was carried by a House of Commons that the year before had, in effect, rejected a measure for the admission of only 400,000 new voters, while the measure to which it now assented added almost a million voters to the electorate.<sup>2</sup>

So far as it goes, Lord Morley's account of this Parliament is admirable and yet he has omitted what is, to Americans, the

<sup>1</sup> Morley, *Life of Gladstone*, II. 205.

<sup>2</sup> *Ib.* II. 226.



most interesting phenomenon of all. He has not pointed out, what nevertheless is true, that the proletariat won enfranchisement when their pressure combined with the pressure of the United States prevented the censure of Lord Russell, by the House of Commons, for the seizure of the Laird Rams. These are the facts, as I understand them, which, when arranged in due relation to each other, elucidate the scope of the work that Mr. Adams did during the first period of his public service abroad. I have now only to sum up concisely the conclusions which I conceive follow from these premises.

For just one hundred years prior to the election of Abraham Lincoln to the presidency, the aristocratic principle in England had been striving to subdue the democratic principle in America, and to that end had fought two wars from which democracy had escaped, as it were, by a miracle. In large part democracy in America had been saved by means of a union with a slave-holding oligarchy, a union which would have been impossible under pressure less severe. Suddenly the bond, designed to fuse these discordant elements in a single organism, burst asunder and, in 1861, the North found herself hemmed in between the slave-holding and the British aristocracies, which were natural allies. To conquer the South, were the South unaided by England, strained the North to the limit of endurance. She gradually massed eight hundred thousand fighting men on the Southern fields of battle, but when she had done this she left herself without fleet or army to resist a foreign foe. Therefore she had to confide the defence of her Atlantic coast, facing England, to her diplomats, for other defenders she had none. The problem presented to these men was intellectual and not dynamical. It was the restraint of England by an idea, for if Great Britain should once join the South, nothing could save the North from overthrow.

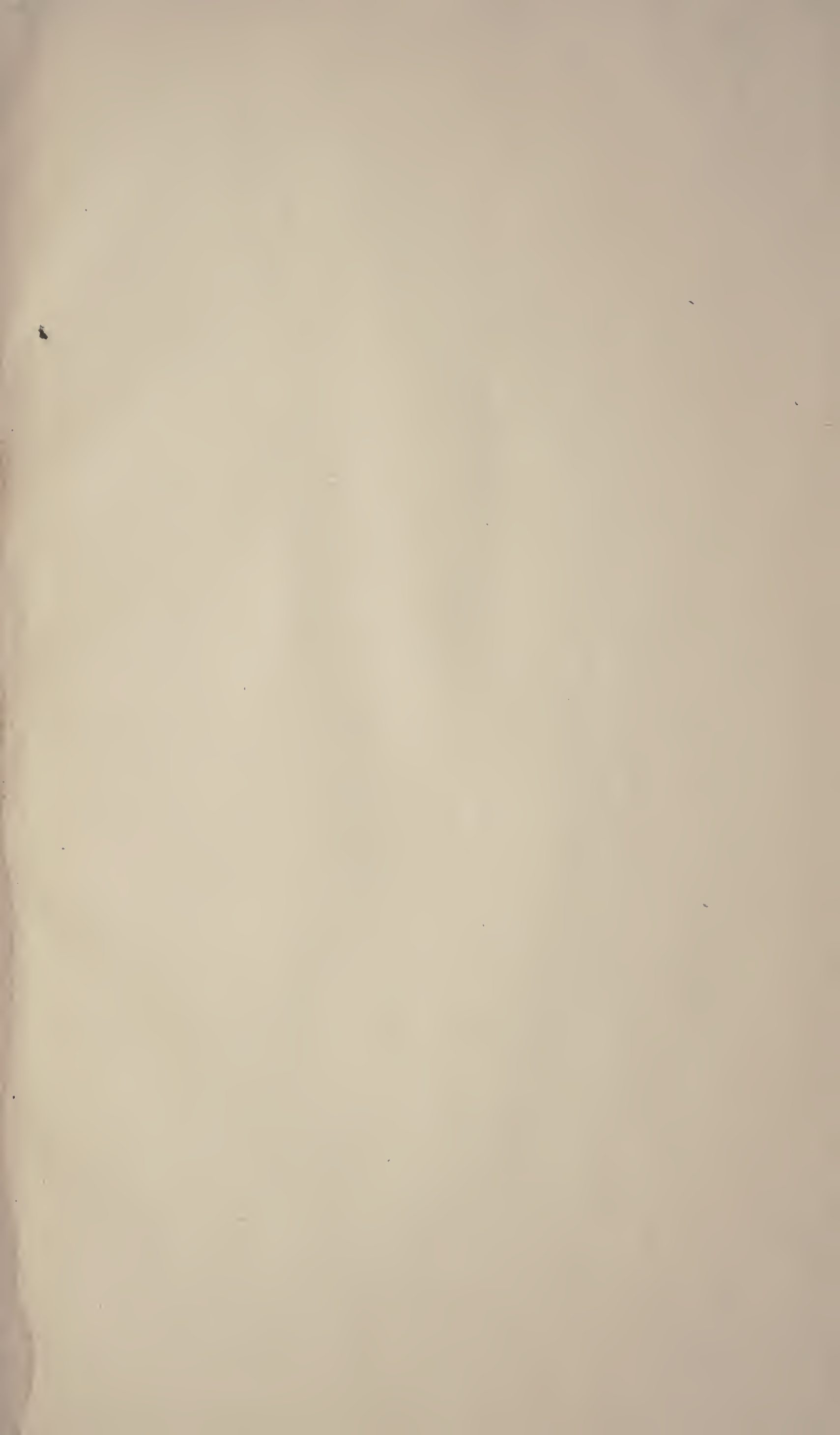
Desperate as the situation seemed at first to the two statesmen, who were in charge in Washington and London, they presently perceived one path to safety. They might be able to bring the disfranchised and discontented classes of Great Britain to support the North in such wise as to paralyze Lord Palmerston's Government, provided their adversary could find no such occasion against them as would incense the whole British people. Indeed the English aristocracy somewhat

resembled an angry snake, relatively harmless until coiled, but deadly if permitted to gather itself. With infinite patience, skill and courage, Mr. Seward and Mr. Adams addressed themselves to their task, changing their tactics to meet the varying stratagems of their adversary as he saw his feints successively foiled, but always pressing him as strongly as they dared. Thus they passed from the passive flexibility by which they eluded the peril of the *Trent*, to the stern but measured onset by which they forced the seizure of the rams. Finally the aristocracy, unable to consolidate its forces, capitulated. The vote of the Commons on February 23, 1864, marks an epoch in civilization.

As in my age I meditate upon the scenes I saw in my youth, as I ponder upon the disparity between the bleeding North and the exultant England of my boyhood, as I recall the ferocity of the passions which once seethed about me and consider the magnitude of the interests which were then at stake, and as, in the midst of these memories, I pause to reflect that during those harassing years a single moment of weakness, a single error of judgment, must have precipitated the fatal catastrophe, I realize at last that I shall search the records of modern diplomacy in vain for such another masterpiece.















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